# SUPREME COURT OF THE UNITED STATES.

## No. 99.

THE RECTOR, CHURCH WARDENS, AND VESTRY OF CHRIST CHURCH, IN THE CITY OF PHILADELPHIA, IN TRUST FOR CHRIST CHURCH HOSPITAL, PLFF'S IN ER.,

vs.

THE COUNTY OF PHILADELPHIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

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UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges [L. S.] of the Supreme Court of Pennsylvania, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between the rector, church wardens, and vestry of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, plaintiffs in error, and the county of Philadelphia, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said rector, church wardens, and vestry of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the 29th of November, in the year of our Lord one thousand eight hundred and fifty-five.

WM. THOS. CARROLL,
*Clerk of the Supreme Court of the United States.*

Allowed by

To the honorable the judges in the within writ named:

The pleas within mentioned, together with the record and proceedings, and all things touching the same, we certify and send together with this writ as within we are commanded.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of Pennsylvania, for the [L. S.] eastern district, at Philadelphia, this nineteenth day of January, A. D. 1855.

RO. TYLER,
*Pro.*

UNITED STATES OF AMERICA, SS:

The President of the United States to the honorable the judges [SEAL.] of the Supreme Court of Pennsylvania, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between the rector, church wardens, and vestry of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, plaintiffs in error, and the county of Philadelphia, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said rector, church wardens, and vestry of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of

right and according to the laws and custom of the United States should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the 29th of November, in the year of our Lord one thousand eight hundred and fifty-five.

(Signed) WM. THOS. CARROLL,
*Clerk of the Supreme Court of the United States.*

Allowed by

R. C. GRIER,
*Assoc. Just. S. C. U. S.*

Dec'r 7th, 1855.

Know all men by these presents, that we, Moses Kemplan, James C. Booth, & C. Campbell Cooper, are held and firmly bound unto the county of Philadelphia in the full and just sum of two hundred dollars, to be paid to the said county of Philadelphia, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, lately, at a Supreme Court of Pennsylvania, in a suit depending in said Court, between the rector, church wardens, and vestry of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, plaintiffs in error, and the county of Philadelphia, defendant in error, judgment was rendered against the said plaintiffs in error; and the said plaintiffs in error having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said the county of Philadelphia, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said plaintiffs in error shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

MOSES KEMPLAN, [SEAL.]
*Warden of Christ Church.*
JAS. C. BOOTH, [SEAL.]
C. CAMPBELL COOPER, [SEAL.]

Sealed and delivered in presence of
H. M. WATTS.

Approved by
J. K. KANE, *D. J.*

The United States of America, to the County of Philadelphia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of Pennsylvania, wherein the rector, church wardens, and vestry of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, are plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable R. C. Grier, one of the justices of the Supreme Court of the U. States, this seventh day of December, in the year of our Lord one thousand eight hundred and fifty-five.

R. C. GRIER.

Service accepted.

JS. HAZLEHURST,
*Clk.*

Pleas before the honorable Jeremiah S. Black, Chief Justice of the Supreme Court of Pennsylvania, and his associates, justices of the same Court, at a Supreme Court in and for the eastern district of Pennsylvania, holden at Philadelphia, of the term of March, 1853, No. 145.

It is thus contained.

EASTERN DISTRICT OF PENNSYLVANIA, *ss.*

The Commonwealth of Pennsylvania, to the sheriff of Philadelphia county, greeting:

We command you that you summon the county of Philadelphia, late of your county, so that they be and appear before the justices of our Supreme Court at our same Court, to be holden at Philadelphia, in and for the eastern district of the State [SEAL.] of Pennsylvania, on the first Monday of June next, to answer the rector, church wardens, and vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, of a plea of trespass on the case, &c., and have you then and there this writ.

Witness the honorable Jeremiah S. Black, Chief Justice of our said Supreme Court, at Philadelphia, the eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-three.

JNO. F. BELSTERLING, *Pro.*
*Prot. Sup. Court, Eastern District.*

[ENDORSED:] 145, March term, 1853. Supreme Court. The rector, church wardens, and vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, vs. the county of Philadelphia. Summons case, returnable the first Monday of June, 1853.

Service accepted for county commissioners.

W. D. BAKER,
*Soli. County of Philad'a.*

May 18, 1853.
(H. M. Watts.)

THE RECTOR, CHURCH WARDENS, and vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital,
versus
THE COUNTY OF PHILADELPHIA.

IN THE SUPREME COURT. Of March term, 1853, No. 145.

And now, to wit, February 27th, A. D. 1854, it is hereby agreed between the parties to the above suit, that the following case be stated for the opinion of the Court in the nature of a special verdict:

On the sixth day of April, A. D. 1833, the Legislature of Pennsylvania passed an act hereunto annexed, marked A.

On the fourteenth day of April, A. D. 1851, the same Legislature passed an act hereunto annexed, marked B.

Afterwards the defendants, by their officers and agents, valued and assessed certain real estate and ground rents, the property of the plaintiffs, situate in the city and county of Philadelphia, at certain rate for State, county, and poor taxes, for the year 1852, as will appear by the annexed schedule, marked C, which property belonged to the plaintiffs before passage of the act of 6 April, 1853.

On the 28th day of March, 1852, the defendants proceeded by warrant of distress to levy upon goods found upon the premises so as aforesaid valued and assessed for the collection of said taxes.

Whereupon the said plaintiffs, afterwards, to wit, on the March, of the year last aforesaid, gave the said defendants the notice hereunto annexed, marked D.

And finally, the said plaintiffs, on the day of April, 1853, paid the said defendants the several amounts of taxes in schedule aforesaid, marked C.

In this schedule are the hospital buildings in the actual occupancy of the plaintiff for hospital purposes.

If the Court should be of opinion under the above state of facts that the plaintiffs are entitled to recover the amount paid under

protest, or any part thereof, then judgment be entered for the plaintiffs; otherwise for the defendant.

H. M. WATTS,
*Att'y for Pl'ffs.*
WM. BADGER,
*Solicitor for the county of Philadelphia.*

March 1st, 1854.

A.

Whereas, it appears that Christ Church Hospital, in the city of Philadelphia, has for many years afforded an asylum to numerous poor and distressed widows who would probably else have become a public charge, and it is represented that, in consequence of the decay of the buildings of the hospital estate, and the increasing burthen of the taxes, its means are curtailed, and its usefulness limited: therefore—

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that the real property, including ground rents, now belonging and payable to Christ Church Hospital, in the city of Philadelphia, so long as the same shall continue to belong to the said hospital, shall be and remain free from taxes.

B.

Act of 14 April, A. D. 1851.

SECTION 13. That all property, real and personal, belonging to any association or incorporated company which is now by law exempt from taxation, other than that which is in the actual use and occupation of such association or incorporated company, and from which an income or revenue is derived by the owners thereof, shall hereafter be subject to taxation in the same manner, and for the same purposes, as other property is now by law taxable; and so much of any law as is hereby altered and supplied be and the same is hereby repealed, provided that nothing herein contained shall be construed to exempt cemetery companies from taxation.

C.

| | Valuation. | County 60 cts. | State 30 cts. | Poor 20 cts. | Total. |
|---|---|---|---|---|---|
| *Chestnut Ward.* | | | | | |
| Estates No. 4 and 5, Front street. dolls. | 30,000 | 180 00 | 90 00 | 60 00 | 330 00 |
| Do. " 2, Letitia Court..... | 2,000 | 12 00 | 6 00 | 4 00 | 22 00 |
| Do. ground rent, 33 So. 3d st..... | 333 | 2 00 | 1 00 | 67 | 3 67 |
| | | | | | 355 67 |
| *Cedar Ward.* | | | | | |
| Between Spruce and Pine street and Schuylkill, 4th and 5th streets..... | 40,000 | 240 00 | 120 00 | 86 00 | 446 00 |
| *Lower Delaware Ward.* | | | | | |
| No. 111, Arch street..... | 14,000 | 84 00 | 42 00 | 2 50 | 128 50 |

| | | | | | |
|---|---|---|---|---|---|
| *High St. Ward.* | | | | | |
| N. E. Cor. of Front and High sts..... | 12,000 | 72 00 | 36 00 | 3 15 | 111 15 |
| *Lower Delaware Ward.* | | | | | |
| No. 8, Cherry street Hospital lot, &c. | 14,000 | 86 00 | 42 00 | | 126 00 |

C.

D.

You are hereby notified that the estate situate (describing the same) is the estate of Christ Church Hospital, and is exempt from the assessment and payment of taxes under an act of the legislature of the sixth day of April, A. D. 1853, as you are fully informed by our notice in writing of the 28th of February ult. We do therefore protest against the distress you have made for the collection of taxes upon the property found upon the premises, and will treat the act as illegal, tortious, and unjust, and hold you, and all others under whom you act, responsible for the same; but, inasmuch as great damage, loss, and inconvenience would result from the sale and removal of the property thus distrained, we pay the amount of the several taxes assessed under this illegal and tortious coercion, and protest against it, of which we desire you to take notice.

MOSES KEMPTON,
*Warden of Christ Church.*

Philad'a, March, 1853.

Endorsed: 145, March T., 1853. Christ Church, in trust for Christ Church Hospital, vs. the county of Philad'a. Case stated in the nature of a special verdict. Filed March 3, 1854. "1 April, 1854. Judgment entered without argument for defendant by the Court."

CHRIST CHURCH, in the city of Philadelphia,
vs.
THE COUNTY OF PHILADELPHIA.

And now, to wit, April 1, 1854, it is agreed that the above case may be removed by the plaintiff to the Supreme Court, without any recognizance being given by them.

WM. BADGER,
*Solicitor for the County.*
H. M. WATTS,
*Att'y for Plff's.*

CHRIST CHURCH, in trust &c.,
vs.
THE COUNTY OF PHILADELPHIA.

*Error assigned.*

The learned Court erred in entering judgment for the defendant.
1 April, 1854. H. M. WATTS, *Att'y for Pl'ff.*

Endorsed: 145, March T., 1853. Christ Church, in trust for Christ Church Hospital, vs. the county of Philadelphia. Agreement for removal to Supreme Court, and errors assigned. Filed April 1, 1854.

April 4, 1854, argued.
Dec. 27, " , re-argued.
March 12, 1855. Opening by C. J. Lewis. Judgment reversed, and judgment in favor of the plaintiffs in error for the sum of one hundred and twenty-six dollars with costs.

Wherefore, it is considered by the Court, now here, that the said, the rector, church wardens, and vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, do recover against the said the county of Philadelphia one hundred and forty-two dollars and twelve cents, which to the said plaintiffs were adjudged for their damages which they sustained by occasion of certain premises and assumptions, by the said defendants to the said plaintiffs, made as for their costs and charges by the said plaintiffs in that behalf expended, whereof the said defendants are convict as appears of record, &c.

March term, 1853, No. 145. Docket entries.

| | |
|---|---|
| THE RECTOR, CHURCH WARDENS, and vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, | H. M. WATTS. |
| | 145. |
| vs. | |
| THE COUNTY OF PHILADELPHIA. | W. D. BAKER. |

Summons case ret'ble the first Monday of June, 1853, exit 11th May, 1853.
" Service accepted."

| | |
|---|---|
| March 3d, 1854. | Case stated in the nature of a special verdict filed. |
| April 1, " | Judgment entered without argument for defendants by the Court. |
| " " | By writing filed, it is agreed that the above case may be removed by the plaintiffs to the Supreme Court, without any recognizance being given by them. Eo die assignments of errors filed. |
| " 4, " | Argued. |
| Decem. 27, " | Re-argued. |
| March 12, 1855. | Opinion by C. J. Lewis, judgment reversed, and judgment in favor of the plaintiffs in error for the sum of one hundred and twenty-six dollars with costs. Eo die opinion filed. |

I, Robert Tyler, prothonotary of the Supreme Court of Pennsylvania, for the eastern district, do certify the above and foregoing to be a true, full, and accurate copy of the whole record, docket, entries, and proceedings in the above case, wherein the rector, church wardens, and vestrymen of Christ Church, in the city of Philadelphia, in trust for Christ Church Hospital, are plaintiffs, and the county of Philadelphia are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court of Pennsylvania, for [L. S.] the eastern district, at Philadelphia, this nineteenth day of January, A. D. 1856.

RO. TYLER,
*Pro.*

I, Ellis Lewis, Chief Justice of the Supreme Court of Pennsylvania, do hereby certify, that Robert Tyler was, at the time of signing the annexed attestation, and now is prothonotary of the said Supreme Court of Pennsylvania, in and for the eastern district, to whose acts as such full faith and credit are and ought to be given; and that the said attestation is in due form.

In testimony whereof, I have hereunto subscribed my name, this nineteenth day of January, one thousand eight hundred and fifty-six.

ELLIS LEWIS.

EASTERN DISTRICT OF PENNSYLVANIA, SS.

I, Robert Tyler, prothonotary of the Supreme Court of Pennsylvania, for the eastern district, do certify that the honorable Ellis Lewis, by whom the above certificate was made and given, was at the time of making and giving the same, and now is, Chief Justice of the Supreme Court of Pennsylvania, to whose acts as such full faith and credit are, and ought to be given, and that his signature thereto subscribed is genuine.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of the said Court, at Philadelphia, this nineteenth day of January, A. D. 1856.

RO. TYLER,
*Pro.*

# SUPREME COURT OF THE UNITED STATES.

## No. 100.

THOMAS JACKSON, WILLIAM HIGDON AND ARCHIBALD OLDS,
Owners of the Steamboat Wetumpka, Libellants and Appellants,

vs.

THE STEAMBOAT MAGNOLIA, her Tackle, &c.
WILLIAM T. JAMES, Master and part Owner.

APPEAL FROM THE DISTRICT COURT OF THE U. S. FOR THE MIDDLE DISTRICT OF ALABAMA.

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UNITED STATES OF AMERICA,
*Middle District of Alabama.*

At a District Court of the United States for the Middle District of Alabama, begun and held at Montgomery, on the fourth Monday of November in the year of our Lord one thousand eight hundred and fifty-five.

Present: the Hon. John Gayle, Judge of said Court.

(*Libel.*)

On the seventeenth day of February, A. D. 1855, a libel was filed in the words and figures following, to wit:—

"UNITED STATES OF AMERICA:
IN THE DISTRICT COURT OF THE UNITED STATES,
*For the Middle District of Alabama:*

William Higdon, Thomas Jackson, and Archibald Olds, owners of the steamboat Wetumpka, hereinafter mentioned, exhibit this their libel against the steamboat called the Magnolia, now lying in the port of Montgomery, or at the wharf of the city of Montgomery, in the district aforesaid, and in the admiralty and maritime jurisdiction of the Honorable Court, whereof William James is, or lately was master, her engine, machinery, boats, tackle, apparel, and furniture; and against all persons lawfully intervening for their interest therein in a cause of collision, civil and maritime: And thereupon the said William Higdon, Thomas Jackson and Archibald Olds, articulately propound and allege as follows:—

*First.* That the said steamboat Wetumpka was a vessel of more than twenty tons burthen, to wit, of three hundred and twelve tons burthen or thereabouts, and at the time when the cause of action, hereinafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States of the United States upon the lakes and navigable waters connecting the same.

*Second.* That, on Saturday, the 11th day of February, 1854, the said steamboat, the Wetumpka, being tight, stanch, and well-manned and provided, left the port of New Orleans, in the State of Louisiana, with a valuable cargo of assorted merchandise, on a voyage to the city of Montgomery on the Alabama River in the district aforesaid.

*Third.* That during the said voyage, to wit, at about half past seven o'clock on the night of the 13th February, 1854, being about one hundred and fifty or two hundred yards above Ede's Ferry, on

the point or right-hand side of the river (Alabama River), going up the river, the captain thereof, Dennison H. Shaw, and the watchman on watch, and carpenter, heard a steamboat coming down, apparently running very fast, at which time the weather was a little foggy and smoky, but they could see the banks of the river and some distance ahead. The Wetumpka was then working very slowly, and when the boat above, which proved to be the Magnolia, was heard, the whistle of the Wetumpka was blown, her engines were stopped, and one tap of the bell was given for the starboard. The Magnolia then came in sight, apparently about two hundred yards ahead, rounding the point in the river, and answered the whistle, but did not answer the bell, and, when first seen, she was heading in a direction which would have cleared us fifty yards to our left if pursued by her, and as soon as the boat came well around the point, she changed her course suddenly, and came across out of the bend of the river. The captain of the Wetumpka said to the pilot, Thomas Jackson, who was then at the wheel, she is coming into us, back the boat; but the Magnolia was coming so rapidly down the stream that no change could be made in the engines of the Wetumpka in time to avoid her, and she struck the Wetumpka on the larboard bow about ten feet from the stern, cutting her down to the cabin steps. The engines of the Wetumpka were started then at once as she was sinking, in order to run her into the shore on our right hand, then about fifty feet from the boat; she reached the bank, but, before a line could be got out, the current caught her and threw her out into the river, when she sunk in about twenty feet water in about two minutes from the time of the collision, and was totally lost—the officers and crew, with the exception of one cabin-boy, who was drowned, having with difficulty saved their lives, some by climbing on to the trees when she first reached the bank, and the others being saved by the Wetumpka's yawl, or being taken from the hurricane deck by the Magnolia.

*Fourth.* That the boat which ran into the Wetumpka proved to be the steamboat Magnolia, bound from Montgomery, on the Alabama River, to Mobile, Alabama, whereof said James was master, but one Smith was then acting as master, and at the time she hove in sight of the Wetumpka the Wetumpka had her lights hung in the forward part of the boat, which if any lookout was kept must have been seen on the Magnolia in season to have enabled her to avoid and give way to the Wetumpka, as she was bound to do, and thereby to prevent a collision therewith.

*Fifth.* That by the exercise of ordinary care the Magnolia might have been carried far to the left of the Wetumpka, as it was the duty of those having charge of her to carry her so as to have avoided the collision.

*Sixth.* That if the engines of the Magnolia had been reversed as soon as our boat was seen by her, and which might have been done,

but was not done, the severity of the shock might have been diminished so as to have prevented the sinking of the boat.

*Seventh.* That all possible means were used by the Wetumpka to get out of the way of the Magnolia as soon as she was seen by the Wetumpka, but owing to the rapidity of her running it was impossible to do so, as the Magnolia was running at about the rate of fifteen miles an hour down stream, though the night was foggy and smoky.

*Eighth.* That at the time of the loss of the said steamboat Wetumpka the libellants were the true and lawful owners of the said steamer, and that the said steamboat was of the value of twenty thousand dollars or thereabouts, and that by reason of the careless, negligent, unskilful, and improper management of the said steamboat Magnolia, and of the collision thereby occasioned of the said Magnolia with the said Wetumpka, the libellants have sustained damages to the amount of twenty thousand dollars or thereabouts, for which they claim reparation in this suit.

*Ninth.* That all the premises all and singular are true. Wherefore the libellants pray that process in due form of law may issue against the said steamboat the Magnolia, her engines, machinery, boats, tackle, apparel, and furniture, and that this Honorable Court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief as to right and justice may appertain, and this Court is competent to give.

THOS. JACKSON,
WM. HIGDON,
By DENISON H. SHAW.
ARCHIBALD OLDS,
By DENISON H. SHAW.

UNITED STATES OF AMERICA,
*Middle District of the State of Alabama.*

Personally appeared before me, Jefferson F. Jackson, a commissioner duly appointed for the said District and empowered to take acknowledgments of bail, affidavits, depositions, &c., at Montgomery, Alabama, the within named Dennison H. Shaw and Thomas Jackson, who being duly sworn, depose and say, that all and singular the premises in the within libel written to which their names are subscribed are true, which was subscribed and sworn to before me this 27th day of January, 1855.

J. F. JACKSON,
*Commissioner.*

HENRY C. SEMPLE, &
HARRIS & DUNCAN,
*Proctors and Advocates of the Libellants.*

Filed in office this 17th day of February, 1855.

Attest: P. H. S. GAYLE,
*Cl'k.*

And on the 17th day of February, A. D. 1855, a bond was filed in the words and figures following to wit:—

(*Bond of Thos. Jackson et als.*)

"UNITED STATES OF AMERICA,

IN THE DISTRICT COURT OF THE UNITED STATES,
*For the Middle District of Alabama.*

On this the 27th day of January in the year of our Lord 1855, before Jefferson F. Jackson, Esquire, a commissioner duly appointed and empowered to take acknowledgment of bail, affidavits, and depositions, etc., within and for the said district, William Higdon, Thomas Jackson, and Archibald Olds, owners of the steamboat Wetumpka, against the ship or steamboat called the Magnolia, in a cause of collision civil and maritime, moved and prosecuted in the above stated Court, which day personally appeared the above named Thomas Jackson and produced for sureties Edward H. Grant and James B. Belshaw, each of the city of Montgomery, Alabama, and the said Thomas Jackson, and Edward H. Grant, and James Belshaw, submitting themselves to the jurisdiction of the Court, bound themselves, their heirs, executors and administrators in the sum of two hundred and fifty dollars for the benefit of whomsoever it may concern, that the said owners shall prosecute their action in this behalf, and shall abide by all orders, interlocutory and final of the aforesaid Court, and pay the costs and expenses, if any, which shall be awarded against them by the final decree of the aforesaid Court or of any appellate Court, and unless they shall do so, they do hereby consent severally that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, wheresoever the same may be found, to the value of the sum above mentioned.

THOS. JACKSON,
JAS. B. BELSHAW,
E. H. GRANT,
Per J. B. BELSHAW.

"Taken and acknowledged before me, the same day, and approved.

JEFFERSON F. JACKSON,
*Commissioner of the Middle Dist. of Alabama.*"

Filed in office this 17th day of February, 1855.

Attest: P. H. S. GAYLE,
*Cl'k.*

On the 17th day of February, A. D. 1855, a warrant of arrest was issued in the words and figures following, to wit:—

(*Warrant of Arrest.*)

"UNITED STATES OF AMERICA,
*Middle District of Alabama.*

The President of the United States of America, to the Marshal of the Middle District of Alabama, greeting: Whereas a libel has been filed in the District Court of the United States for the Middle District of Alabama, on the 17th day of February, in the year of our Lord one thousand eight hundred and fifty-five, by William Higdon, Thomas Jackson, and Archibald Olds, owners of the steamboat Wetumpka, against the steamboat called the Magnolia, her engines, machinery, boats, tackle, apparel, and furniture, and against all persons intervening for their interest in a cause of collision, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process thereupon.

You are therefore hereby strictly charged and commanded that you arrest the steamboat called the Magnolia, whereof William James now is, or lately was master, her engines, machinery, boats, tackle, apparel, and furniture, if she shall be found within your district, and the same so arrested you keep under safe and secure arrest until you shall receive further orders from this Court, or the same shall be discharged from arrest by due course of law, and that you cite at the premises all persons in general, who have or pretend to have any right, title, or interest therein, to appear before the Judge of the District Court of the United States of America, for the Middle District of Alabama, on the fourth Monday of May, in the year of our Lord eighteen hundred and fifty-five, then to answer unto William Higdon, Thomas Jackson, and Archibald Olds in a cause of collision, civil and maritime, and further to do and receive in this behalf as to justice shall appertain; and that you duly certify the Judge of the aforesaid Court what you do in the premises, together with these presents.

Witness the Honorable John Gayle, Judge of the District Court of the United States, for the Middle District of Alabama,
[L. S.] fourth Monday of November, in the year of our Lord one thousand eight hundred and fifty-four, and of American Independence the 79th year.

Issued the 17th day of February, in the year of our Lord one thousand eight hundred and fifty-five.

Attest: P. H. S. GAYLE,
*Clerk of the District Court of the United States, for the Middle District of Alabama.*

(*Marshal's Return.*)

Received in office, February 17, 1855, Cade M. Godbold, U. S. Marshal, by John W. Gordon, Deputy Marshal. In obedience to the within attachment, I did, on the 17th day of February, A. D.

1855, attach and arrest the within named steamer Magnolia, her engines, machinery, boats, tackle, apparel, and furniture, at the wharf, in the city of Montgomery, Alabama, in the Middle District of Alabama, and gave due notice to all persons claiming the same, that the District Court of the United States for the Middle District of Alabama, would, at the next term thereof, proceed to the trial and condemnation thereof, should no claim be interposed for the same; and that afterwards, William F. James, the master of the boat Magnolia, within named, filed a claim thereto in said court, and entered into bond in the penalty of forty thousand dollars, conditioned to abide by and answer the decree in said cause; and the said bond being duly approved by the libellants, which bond is returned herewith into court, I delivered up the said steamer Magnolia, with her engines, machinery, boats, tackle, apparel, and furniture, to the said claimant.

CADE M. GODBOLD.
*United States Marshal for the Middle District of Alabama.*

By JOHN W. GORDON,
*Deputy Marshal.*

(*Claim of W. F. James.*)

U. S. DISTRICT COURT,
*Montgomery, Ala.*

JACKSON and others, Libellants,
vs.
ST'R MAGNOLIA.

To the Hon. John Gayle, Judge of the District Court of the United States for the Middle District of Alabama.

William F. James, Captain, Master, and part owner, and bailee for the other owners of the steamboat Magnolia, her boats, tackle, apparel, and furniture, intervening for their interest and his own, in the said steamboat Magnolia, her boats, tackle, apparel, and furniture, appears before this Honorable Court, and claims that he, the said William F. James, is captain, master, and part owner and bailee for the other part owners; he and they are the true and bona fide owners of said steamboat Magnolia, her boats, tackle, apparel, and furniture, and that no other person is the owner thereof. And thereupon, the said claimant prays that this Honorable Court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

W. F. JAMES.

WATTS & JUDGE,
*Proctors.*

Sworn Feb. 17th, 1855, before me,

J. F. JACKSON,
*U. S. Com'r.*

And afterwards a bond was filed by the claimants in the words and figures following, to wit:—

(*Bond of Claimants.*)

"THE STATE OF ALABAMA,
*Montgomery County,*

Know all men by these presents, that we, William F. James, of Mobile, Ala., as principal, and A. H. Johnson, and J. J. Cox, as sureties, are held and firmly bound unto Thomas Jackson, William Higdon, and Archibald Olds, in the penal sum of forty thousand dollars, to be paid unto the said Thomas Jackson, William Higdon, and Archibald Olds: to which payment well and truly to be paid we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals this the (17th) seventeenth day of Feb., 1855.

Whereas, in a certain cause of collision, civil and maritime, moved and prosecuted in the District Court of the United States of America for the Middle District of Alabama, on behalf of the said Thomas Jackson, William Higdon, and Archibald Olds, against the steamboat Magnolia, her boats, tackle, apparel, and furniture; a warrant of arrest has been issued out of the said court against the said steamboat, boats, tackle, apparel, and furniture, which said warrant is now in the hands of Cade M. Godbold, through his deputy, Jno W. Gordon, of the said district; and in virtue of which said warrant the said steamboat, her boats, tackle, apparel, and furniture, have been arrested by the said Cade M. Godbold, through his said Deputy Marshal of said District, and are now in his custody. Now, therefore, the condition of this obligation is such, that if the above bounden William F. James, the claimant of the above steamboat Magnolia, her boats, tackle, apparel, and furniture, shall well and truly abide and answer the decree of the said court in the aforesaid cause, then this obligation shall be void, otherwise it shall remain in full force and virtue.

W. F. JAMES, [SEAL.]
A. H. JOHNSON, [SEAL.]
J. J. COX. [SEAL.]

In presence of

J. G. OWEN,
JNO. J. NOBLE.

(*Answer of Respondents.*)

DISTRICT COURT OF THE UNITED STATES,
*For the Middle District of Alabama at Montgomery.*

The answer and claim of William F. James to the libel of Thomas Jackson, William Higdon, and Archibald Olds, filed in this Court

against the steamboat Magnolia, her tackle, apparel and furniture, and against all persons intervening for their interest in and to said steamboat: This respondent intervening for his interest in said steam, as part owner, master and bailee of the other owners thereof, claims the same, and now, answering said libel, this respondent says that about the 12th day of February, 1854, the steamboat Magnolia, whereof this respondent was master, but George E. Smith was then acting as master, left the port of Montgomery for the port of Mobile, having on board a valuable freight besides about two hundred passengers—that the river was full or flush at the time. That on or about the 13th day of February, 1854, and in the County of Wilcox, in the State of Alabama, far above tide-water, a collision took place between the steamboat Magnolia and the steamboat Wetumpka, under circumstances that will be hereafter detailed. It was after dark, and as well as this respondent remembers, on the night of the 13th February aforesaid. The Magnolia was going down the river, but not at a rapid speed, as is alleged, but at her usual or rather slower than her usual speed. That she, the said Magnolia, was turning a short bend in the river called ———, and it was quite foggy, so that objects could be seen but at a small distance. That the Magnolia was descending the river in her proper place, to wit, west of the centre or middle thereof, and about the time of turning the bend a steamer was heard but not seen, and as soon as the steamer was heard, immediate orders were given on the Magnolia to reverse her engines and back water, which order was immediately obeyed, and from that time until the collision she continued so to work her engine. But this respondent says that the steamboat Wetumpka did not apparently, and he therefore believes she did not reverse her engine at all. This respondent says that the steamboat Magnolia continued to back water after hearing the steam escape from Wetumpka, until her stern was against the bank and trees of the western shore of the river, that her stern at the time of the collision was only about ten feet from the western shore of the river, and that the Wetumpka at the time of the collision was much nearer to western bank than the eastern bank of the river, and that the Wetumpka's engines were not stopped at all.

This respondent says, that as the Wetumpka was coming up the river it was her duty to have run close to the point which made in on the east side of the river, and had she been in her proper place east of the centre or middle of the river, the two boats would have passed each other not only without collision, but would not have come within a hundred feet of each other. But the said steamboat Wetumpka being out of her proper place, and not stopping her engines, the collision became unavoidable, notwithstanding the efforts made by the officers and crew of the Magnolia to avoid the collision. He admits that a collision ensued which caused the Wetumpka to sink in a short time thereafter, and the Magnolia was greatly injured and would have sunk, but her injury was above the water line. But

he says and alleges that the collision was without the fault or neglect of this respondent, or the officers of the crew of the Magnolia, but was wholly unavoidable on the part of this respondent, his officers and crew, and it took place notwithstanding the greatest efforts from the time the Wetumpka was heard to avoid it. He says if there was fault or neglect on the part of either boat, it was on the side of the Wetumpka, and there was none on the part of the Magnolia, her officers or crew. He says the whistle of the Magnolia was blown as soon as the Wetumpka was heard, and also her bell was rung, and all the notice possible was given to the Wetumpka with the view to avoid the collision. He says it was at least twenty minutes after the collision before the Wetumpka sunk, and the Wetumpka sunk about a half of a mile below where the collision took place. Respondent, further answering, says that the Wetumpka was not worth more than ten thousand dollars, and after the sinking the wreck was sold for from thirty-five to forty-five hundred dollars. Further answering, this respondent says that he is advised and believes, and therefore states, that inasmuch as the collision aforesaid took place far above tide-water, on the Alabama River, in the County of Wilcox, in the State of Alabama, said County of Wilcox being without the limits, and beyond the jurisdiction of the United States District Court for the Middle District of Alabama, that this Honorable Court has no jurisdiction to try the cause, nor to take cognizance thereof, and therefore he prays that the cause may be repudiated and dismissed from this Honorable Court.

He further says, that the said collision took place more than twelve months previous to the filing of this libel, and therefore he insists that the statute of limitations of one year, passed by the General Assembly of the State of Alabama, is a bar to said libel. He further says that he is informed and believes, therefore charges that the libellants were fully insured for all their interest in said steamboat, and have received the amount of their insurance from the companies which insured the same, and hence they are not entitled to any compensation for the loss of said steamboat. He admits that the libellants were part owners of the steamboat Wetumpka, but denies that they were sole owners. This admission and denial is made from information alone. From information and belief, he also alleges that Dennison H. Shaw and William Stewart were part owners of the Wetumpka at the time of the collision. He admits that the Wetumpka was engaged in the trade alleged in the libel, and had complied with the acts of Congress, so far as to permit her to carry on that trade according to law, and she was about the burthen alleged. And having fully answered all the allegations of the libel that he is advised is material to be answered, and here averring that he believes all the allegations in this answer contained are true, prays to be discharged with his costs.

FAIR & WHATLEY,
WATTS, JUDGE & JACKSON,
*Proctors for Respondents.*

(*Aff't of Claimant, W. F. James.*)

DISTRICT COURT OF THE UNITED STATES,
*for the Middle District of Alabama.*

Personally appeared before me, P. H. S. Gayle, Clerk of the District Court of the United States for the Middle District of Alabama, William F. James, the claimant and respondent in the foregoing answer, who being duly sworn, on oath says that the allegations set forth in the above and foregoing answer are true to the best of his knowledge, information, and belief.

W. F. JAMES.

Sworn to and subscribed before me, this 15th day of March, A. D. 1855.

P. H. S. GAYLE,
*Cl'k.*

Filed in office, March 15th, 1855.

P. H. S. GAYLE,
*Cl'k.*

(*Dennison H. Shaw's Affidavit.*)

IN THE DISTRICT COURT OF THE UNITED STATES
*for the Middle District of Alabama.*

THOMAS JACKSON, WILLIAM HIGDON, ARCHIBALD OLDS,

vs.

THE STEAMER MAGNOLIA.

*Southern District of Ohio, ss.*

Personally appeared before Samuel S. Carpenter, a United States Commissioner in and for the District aforesaid, duly appointed and authorized to take affidavits, acknowledgments of bail, and depositions to be used in the Courts of the United States, Dennison H. Shaw, who being first duly sworn, deposeth and saith that he is the agent of the plaintiffs in the above entitled cause; that the testimony of Charles Harris is material and necessary for said plaintiffs, as he verily believes, in the prosecution of said cause; that said Charles Harris resides in Cincinnati, Ohio, more than one hundred miles from the Middle District of Alabama, where the Court in which said cause is to be tried is appointed by law to be held. Deponent further says that he is informed and believes that William F. James, owner and claimant of said steamer Magnolia, resides in the city of Mobile, and State of Alabama, more than one hundred miles from Cincinnati, Ohio, where said deposition of said Harris is expected to be taken, and that as he is informed and believes said James has no attorney or agent within one hundred miles of Cincinnati, where said deposition is expected to be taken.

And further deponent saith not.

DENISON H. SHAW.

Sworn to and subscribed in my presence this 13th day of September, A. D. 1855.

SAM'L S. CARPENTER,
*U. S. Commissioner S. Dist. O.*

(*Deposition of Charles Harris.*)

THE UNITED STATES OF AMERICA,
*Southern District of Ohio, City of Cincinnati, ss.*

Be it remembered, that on this 13th day of September, A .D. 1855, I, Samuel S. Carpenter, United States Commissioner, duly appointed by the Circuit Court of United States for the Seventh Circuit and District of Ohio, and authorized as such to take acknowledgments of bail and affidavits, and to take depositions to be used in the courts of the United States, did call and cause to be and appear personally before me at my office in the city and district aforesaid, one Charles Harris, to testify and the truth to say on behalf of the plaintiffs in a certain action pending in the District Court of the United States for the Middle District of Alabama, wherein Thomas Jackson, William Higdon, and Archibald Olds are plaintiffs, and the steamer Magnolia is defendant.

And the said Charles Harris being about the age of forty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Charles Harris, and he did thereupon depose, testify, and say as follows:—

*Examination upon behalf of Plaintiff.*

1st question. State your name, age and residence, and your occupation, and how long you have been engaged in it?

Answer. My name is Charles Harris. I am forty-one years old. I reside in Cincinnati, Ohio. I follow the river, and have done so about fifteen years in various capacities, as watchman, deck hand, mate, and so on, just as it happens.

2d question. State where you were in February, A. D. 1854, and in what capacity?

Answer. I was then a deck hand on the steamer Wetumpka, on the Alabama River.

3d question. State whether or not you were on the steamer Wetumpka at the time of her collision with the steamer Magnolia, and when and where it occurred, and all you know about it?

Ans. I was on said steamboat Wetumpka last winter a year ago, at the time of the collision between her and the Magnolia on the Alabama River. The Wetumpka was going up the river. It was in the evening after supper, but I do not recollect the hour; we were running up the right hand shore. When I first saw the Magnolia, previous to the collision, I was sitting forward on the bits, forward

of the capstan and near the stem. I think we were then from a quarter to a third of the width of the river from the right hand shore when I first saw her. It was a tolerably dark night. There had been some fog, and there was some little at the time. The Magnolia was, I should think, about 300 yards from us when I first saw her signal lights. We were then working pretty slowly. We were not running fast. We were then going up under a point, and the Magnolia appeared to be coming around towards us—swinging around all the time. I recollect our bell was tapped one tap. The engine had been stopped previously. I sat there until I saw where the Magnolia was coming—where she would strike us. I started aft, and went across the forecastle on to the starboard side. I started back towards the stern and got as far as the after end of the boilers (I walked, as it was too dark to run, and having no light, I went slow). When the Magnolia struck us, I crossed over on to the larboard side aft of the boilers, intending to go forward and see what harm was done. When I got on the larboard guard, I saw the bow going under water. I turned round and went through the cook-house on the larboard guard into the pantry, and then on to the guard of the boiler deck. I intended then to go forward and go up the stairs on to the hurricane deck, but the water did not give me time, and I climbed up by a stanchion. I saw she was going to strike us forward, and therefore went aft. She struck us about ten feet aft of where I was sitting at the larboard chalk, as near as I can judge. She was about fifty yards from us when I started aft. At the time I started from the bits, I don't think the Wetumpka had more than enough headway to stand up against the current. She was then heading towards the point, and might have been one hundred feet from the right hand shore. From the time she struck us, until we sunk, was not, I think, over three minutes. The engine of the Magnolia was stopped before she struck us, but she was under great headway. It was not much stopped. Five bales of hay on the Wetumpka were afterwards found on the bow of the Magnolia, which were thrown there by the collision.

And further deponent saith not.

CHARLES HARRIS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to the 13th day of September, 1855, before me.

SAM'L S. CARPENTER,
*U. S. Commissioner.*

THE UNITED STATES OF AMERICA,
*Southern District of Ohio, City of Cincinnati, ss.*

I, Samuel S. Carpenter, a United States Commissioner, duly appointed by the Circuit Court of the United States, for the 7th Circuit and District of Ohio, and authorized as such to take acknowledg-

ments of bail, and affidavits, &c., and to take depositions, and acting as such in the Southern District of Ohio, do hereby certify that the reason for taking the foregoing deposition is, and the fact is as appears by the affidavit of Dennison H. Shaw, that the witness, Charles Harris, is material and necessary in the cause in the caption of said deposition named, and that he resides more than one hundred miles from the place of trial of said cause.

I further certify, that no notification of the time and place of taking said deposition, signed by me, was made out and served on the opposite party, to be present at the taking of said deposition, and put interrogatories, if he or they might think fit, the said party residing more than one hundred miles from the place of taking said deposition, and having no agent or attorney known to me as such within that distance.

I further certify, that on the 15th day of September, A. D. 1855, I was attended by the agent of said plaintiffs, and by the witness, Charles Harris, who, being of sound mind and lawful age, was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and his foregoing deposition was by me reduced to writing in his presence, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition for the purpose of sealing, directing, and forwarding the same with my own hand to the Court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 14th day of September, A. D. 1855.

SAM'L S. CARPENTER, [SEAL.]
*U. S. Comm'r, S. Dist. Ohio.*

| | | |
|---|---|---|
| Commr's fees | $4 | 25. |
| Certificate, cl'k | | 50. |
| Postage | | paid by plff. |

S. S. C., *Com'r.*

(*Clerk's Certificate.*)

THE UNITED STATES OF AMERICA,
*Southern District of Ohio, ss.*

I, William Miner, Clerk of the Circuit Court of the United States of America, for the Southern District of Ohio, in Seventh Circuit, do hereby certify that I am well acquainted with the handwriting of Samuel S. Carpenter, whose name is subscribed to the foregoing paper writing, and that the signature to the same is in his proper handwriting.

And I do further certify, that he was at the time of signing the same a United States Commissioner, duly appointed under and by virtue of the acts of Congress, in such behalf made and provided, by the Circuit Court of the United States of America for the Southern District of Ohio.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Circuit Court, this fifteenth day [L. S.] of September, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth.

WM. MINER,
*Clerk.*

DISTRICT COURT OF THE UNITED STATES,
*for the Middle District of Alabama.*

THOMAS JACKSON, WILLIAM HIGDON, and ARCHIBALD OLDS,
vs.
THE STEAMER MAGNOLIA.

*Affi. of D. H. Shaw.*

Before Samuel S. Carpenter, a United States Commissioner in and for the Southern District of Ohio, duly appointed and authorized to take acknowledgments of bail and affidavits, &c., personally came Dennison H. Shaw, who being duly sworn deposeth and saith that he is the agent of the plaintiff in the above stated cause, and that the testimony of John Cleveland, Peter Brown, Thomas F. Eckert, and Dennison H. Shaw, is, as he is advised by his counsel, and verily believes, material and necessary for said plaintiffs in the prosecution of their said cause, and that said John Cleveland, Peter Brown, Thomas F. Eckert, and Dennison H. Shaw all reside in the county of Hamilton and State of Ohio, and are now absent from the State of Alabama, and more than one hundred miles from Montgomery, in the State of Alabama, the place of holding said District Court of the United States, for the Middle District of Alabama, in which said cause is pending. And this affiant further says, that he is informed and believes that William F. James, owner and claimant of the said steamer Magnolia, resides in the city of Mobile in the State of Alabama, more than one hundred miles from the city of Cincinnati in the State of Ohio, where the examination of said witness is expected to be taken, and that he is informed and believes that the said William F. James has no attorney or agent within one hundred miles from Cincinnati, Ohio, where the depositions of said witness is expected to be taken.

DENNISON H. SHAW.

Sworn to and subscribed before me this 5th day of July, A. D. 1855.

SAM. S. CARPENTER,
*U. S. Commissioner in and for the Southern District of Ohio.*

Depositions taken, de bene esse, before me, Samuel S. Carpenter, United States Commissioner in and for the Southern District of Ohio, duly appointed by the Circuit Court of the United States in and for the seventh Circuit and District of Ohio, and authorized to take affidavits and depositions under the acts of Congress of the United States, on Thursday the fifth day of July, in the year one thousand eight hundred and fifty-five, at the office of the Firemen's Insurance Company, in the city of Cincinnati in the State of Ohio, and Southern District of Ohio, to be used as evidence on behalf of the plaintiffs in a certain cause pending in the District Court of the United States for the Middle District of Alabama, at Montgomery, Alabama, in the District aforesaid, wherein Thomas Jackson, William Higdon and Archibald Olds are plaintiffs, and the Steamer Magnolia is defendant.

(*D. H. Shaw's Deposition.*)

Dennison H. Shaw, being then and there produced, and being about the age of forty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Dennison H. Shaw, and he did thereupon depose, testify, and say as follows, viz:—

1st Question by counsel for the plaintiff.

State your name, age, residence and occupation? State how long you have been acquainted with river navigation, and in what capacity? what office, if any, you held on the steamer Wetumpka? what when she came into collision with steamer Magnolia, when and where it was, and all you know in regard to the same?

Answer. My name is Dennison H. Shaw. I am forty-two years old. I reside in Hamilton County, Ohio. I am at present a steamboat engineer. I have been connected with river navigation a little over twenty-three years, the greater portion of the time as engineer. I have acted as pilot a few months of my time. For the last eleven years I have been acting as captain most of the time. I was commander of the steamer Wetumpka at the time of her collision with the steamer Magnolia. I was on watch in front of the hurricane deck at the time; this collision occurred on the 13th day of February, 1854, about half past seven o'clock in the evening, on the right hand point as you go up the Alabama River. I suppose about three hundred yards above Ead's Ferry, and about one hundred and fifty yards below or under the point. It had been rainy that day, and there was

a low fog and smoke together on the water at the time of the collision, so that it was necessary to work the boat slowly at times to go along with safety. The Wetumpka had been working slowly for several minutes, when I heard a boat coming down; I immediately ordered the pilot to stop the engines and hold the boat close up under the point—the right hand point. He immediately obeyed the order. I blew our whistle, which the Magnolia answered. I then waited until the Magnolia's chimneys were visible above the fog. The lower part of the boat was hidden by the fog. She was then I suppose two hundred yards off. I then gave our bell one loud tap, and remarked to our pilot that she was going around in the bend to the starboard. She did not answer our bell. I walked forward then to the front of the hurricane deck, and in a few moments saw her change her course, coming around towards us. I ordered our pilot to back the boat, that she was coming into us, but before it could be done she struck us. She was coming with such speed, almost full speed. Her engines were stopped when she struck us; not working at all; and she did not back out of us until our first decks, main decks, were under water. She struck us about ten or twelve feet from our stem on our larboard side, coming quartering into us; that her stem came into the middle of the forecastle against our cabin steps. We sunk over our main decks in less than a minute, and sunk to our cabin floor within two minutes. When the Magnolia struck us I ordered our pilot to go ahead on the engines, and run the boat ashore into the woods, that we were sunk, which he did. Our engines made a few revolutions, but were soon stopped by the condensing of the steam from the boilers being immersed in the water. I suppose we were about one hundred feet from the shore when the Magnolia struck us. About two widths of the boat. We went into the shore. By the time we struck the shore, we had sunk so that there were two feet of water in the cabin. Part of the crew got off on the timber hanging over from the shore, and a cabin boy in doing so lost his hold and was drowned. The boat sunk so quick that two of the firemen could not get out of the fire-room, and were drowned. After we struck the shore, the timber sprang our bow out into the river, so that the boat lay with her stern under the point, and her bow out into the river crossways, and the boat then floated down the river. Owing to the cargo and the cabin being well fastened, so that the cabin did not come off, she did not sink any deeper, but floated along. She floated along some 150 or 200 yards from where the collision took place, when the Magnolia came up, with her bow against the larboard side of our cabin forward, and shoved our bow around towards the right hand shore, when she caught on a shore bar where she now lays.

At the time of the collision our engines had been stopped so long that our headway had run out and we were just standing up against the current without making any headway.

When we first heard the Magnolia, we were one-third of the width of the river from the point side. The river there is 250 or 300 yards

wide. If the Magnolia had kept her course as she was running when I first saw her, she would have cleared us fifty yards to the starboard.

2d question by the same. State, if you know, how old was the Wetumpka, how long running, what was her original value, and what her value at the time of the collision. State also if you know whether she was made a total wreck by the collision?

2d ans. The Wetumpka was about fourteen months old when she was sunk. She cost originally near twenty-five thousand dollars. She was in excellent repair and in good condition when she sunk. She had not been running over eight months. She could not have been purchased from her owners at the time of the collision for less than twenty thousand dollars. I considered her worth that sum. She was made a total wreck by the collision.

DENISON H. SHAW.

(*Deposition of Jno. Cleveland.*)

John Cleveland being also then and there produced, and being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine him, and he did thereupon depose, testify, and say as follows, viz:—

1st Question by plaintiffs' counsel. State you name, age, residence, and occupation; also, whether you were on the steamer Wetumpka when she came in collision with steamer Magnolia; in what capacity; when and where said collision occurred, and all you know in regard thereto.

Ans. My name is John Cleveland. I am forty years old. I reside in Cincinnati, Hamilton County, Ohio. I am a carpenter. I was employed in that capacity on the steamer Wetumpka when she came into collision with the steamer Magnolia. The place where the collision occurred is better known to me as Coal Bluff, about two hundred miles, it is called, above Mobile, and a short distance above Ead's Ferry. It was on the evening of the 13th day of February, A. D. 1854, about half past seven o'clock, I should judge. I was standing close forward on the hurricane deck. The captain had come out a few minutes before, and came along where I was standing, and we stood there talking together. When he first came out, he said to the pilot, "Is not it time we were meeting one of those boats?" The pilot said "yes," or something like that, but we ought to have met one of them before. We stood there talking a few moments, when the captain turned and said to the pilot, "there comes one of the boats now; stop her and hold her in." I did not then see the boat myself. The captain then left me, and went to the whistle and blew it. Looking around again from the captain to the river, I saw the top of the chimney of the Magnolia. I then looked around, and the captain (Shaw) was stepping to the bell, which he

tapped for the starboard side, one tap of the bell. They answered the whistle, but did not answer the bell. When I first could see the Magnolia's lights (the lights from the cabin shining through the skylight on the larboard side) I supposed she was going off in the bend, and, judging from the position of her lights, she would have cleared us forty or fifty yards on her starboard side if she had kept on in her course; but in a moment or two she changed her course, as appeared by her lights, and came towards us. I heard Captain Shaw then say to our pilot—she is coming into us, back her. I heard the backing bell ring. I still kept my position, watching the Magnolia, until she came within a few feet of us. Just at that moment I stepped back of our chimneys till the collision took place, and then ran forward and saw that she was into us.

She struck about ten feet back of our stem on our larboard bow, and cut in towards our cabin steps. I then started below to see if anything could be done to save the boat from sinking. I found the cabin steps were mashed up, and I could not get down, and that the water was then nearly to the boiler deck. I went to the hurricane-deck immediately, and there remained. When the Magnolia backed out of us our bow swung out into the river, and she floated down the river slowly. The Magnolia rounded to and came up on our larboard side, and shoved us around, with our bow up the river again and in towards the shore.

She then dropped down and came up at our stern, and, I think, shoved us in a little towards the shore. We floated down from where we were struck about 100 yards, or thereabouts, as nearly as I can recollect. Our boat was buoyed up, I suppose, by our cabin being fast, and by the amount of hay and light freight under the cabin. She settled down solid on the bottom in about twenty feet of water, where she remains. I remained on the hurricane-deck all the time, except when I attempted to go below.

The night was somewhat smoky, but I could distinctly see both shores; the trees on one side, and the top of the Bluff on the other. We were running along about 90 or 100 feet, or about twice the width of the boat, from the right hand shore, to the best of my judgment; that is, we were not over that distance from the shore when the boat struck. We were running slowly, and had been for some time, when the order was given to stop the boat and hold her in. I thought the pilot was very cautious and running the boat under a slow bell, when I could see as plainly as I could then. At the time of the collision the headway of the Wetumpka was stopped, or nearly so. I think it was not over two minutes, if it was that, until the water was over the boiler deck. To the best of my judgment the Magnolia must have been 200 yards off when I first saw her. I did not hear any bell from her until she got close to us, when I heard one of her engine bells, which, I thought, was to stop her. It may have been to back her, but her engines were not working when she

came into us. She did not back out of us until we had swung in nearly to the shore with our bow.

I should judge from the time when I first saw her until she came into us, that the speed of the Magnolia was twelve or thirteen miles an hour.

2d question by same. State the condition of Wetumpka at the time of the collision?

Ans. I considered her in better condition then for that trade than ever she had been before. It was as good as could be for a boat built for a passenger and freight boat on the river, after the river style of building. I do not know the original value of the boat, but I should judge she was worth over twenty thousand dollars at the time of the collision, comparing her with other boats. By what I have said as to the condition of the boat, I mean that she was in as good a condition as she could be put in for the through trade.

JNO. CLEVELAND.

(*Deposition of Peter Brown.*)

Peter Brown being also then and there produced, and being about the age of thirty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine him, and he did thereupon depose, testify, and say as follows:—

1st question by counsel for the plaintiffs. State your name, age, residence and occupation? Also whether you were in the Wetumpka at the time of her collision with the steamer Magnolia; in what capacity? when and where it occurred, and all that you know in regard thereto?

Ans. My name is Peter Brown; I am thirty-one years old; I reside in Cincinnati, County of Hamilton, and State of Ohio; I am a steamboat mate; I have been on the river for ten years, as mate six years; I was on the steamer Wetumpka at the time of her collision with the steamer Magnolia, which happened at half past seven o'clock on the evening of the 13th day of February, 1854, on the Alabama River, a short distance above Ead's Ferry, on the right hand shore going up. I was asleep at the time the boat struck; the watchman came and called me, and I run out on the hurricane roof, and saw the Magnolia just backing out of us. She was sinking down very fast, and I ran back to the stern on the starboard side, and by the time I got there she was about turning over on her larboard side. Her stern was then so close ashore, that the clerk stepped off the boiler deck upon a tree, without getting into the river, and her bow was swinging out. I was pushed off or fell from the hurricane deck into the river and swam ashore. I suppose the distance was about twice the width of the boat. I remained there until the Magnolia's yawl came and took us down to the wreck.

The boat floated down about 150 yards after she was struck, and the collision took place about 150 yards below the point.

The knee that supported the jack-staff (part of the stem) was knocked off at the time of the collision, and lay about the width of the boat from the bank. It had a piece of the stem band with it, which, being of iron, it was too heavy to float from the place where it fell. Two men with the yawl could not move it. It was found about 150 yards below the point on the right hand shore. Some of the freight was swept off by the collision and lay among the bushes at the shore right opposite the place where the knee lay.

PETER BROWN.

(*Deposition of Thos. F. Eckert.*)

Thomas F. Eckert, being also then and there produced, and being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine him, and he did thereupon depose, testify, and say as follows:—

1st question by counsel for plaintiffs. State your name, age, residence, and also how long you have been acquainted with river navigation, and in what capacity? also whether you visited the Wetumpka immediately after the wreck, and what was her position, condition, &c.?

Ans. My name is Thomas F. Eckert. I am forty-five years old. I reside in Hamilton County, Ohio. I have been acquainted with river navigation for twenty-eight years. I followed the river for 22 years. I have run as master for eighteen years; also as engineer for several years. I was on the wreck of the Wetumpka about the 20th of April, 1854. I spent some two days there. It was on the Alabama River, above Ead's Ferry. The hull was lying about quartering across the river, with the bow about thirty feet from the shore, ascending the river. There was at that time I think about 5½ or 6 feet of water in the channel. There was about two feet of water on her stern, and about ten feet on her forecastle—the water having cut away the sand under her bow, and let it down. She lay on her larboard side—that is to say, there was ten feet of water on her larboard guard, and two feet on her starboard, amidships. I went there for the purpose of ascertaining whether it was possible to raise the hull. After having made a thorough survey of the boat, I found that she was cut down on the larboard side, commencing about four feet aft of the forward chalk, and running back eighteen or twenty feet, and down to the knuckle. I found that the hull could not be raised, and was not worth raising if it could be. After having abandoned the enterprise of raising the boat, I went at the request of the person in charge of the wreck, in a boat, to have him point me out the place where the collision took place. While there,

the river having fallen a great deal, I looked around to find anything that would show that he was in the right place. I saw a *knee* there near the edge of the water, half covered up in the mud. I got out of the yawl and examined it, and found it to be a knee that had originally been on the bow of the boat to support the jack-staff—the hinge that supports the jack-staff being fast to the wood. I cannot say to what boat this knee belonged. The iron attached to this knee would weigh about 18 or 20 pounds.

2d question by same. State whether you made personal examination of the points of the river at the place of collision? State the proper positions of steamers ascending and descending the river at that point?

Ans. I did make a special examination of the river at the place of collision.

At a fair or moderate stage of water, an ascending boat should keep to the right hand shore of the river (going up) at that point, and a descending boat should keep the bend. It is always customary for boats ascending to take the point in narrow rivers.

3d quest. by same. State now whether the knee before referred to would float or sink immediately? and also, whether if the knee on shore indicated the point of collision and belonged to the Wetumpka, she could have ascended much nearer to the right hand shore?

Ans. The knee would sink immediately, being of oak, and having so much iron attached to it, and would lie in the place where it sunk. If that knee belonged to her, I do not think she could have ascended much nearer the right hand shore with safety.

4th quest. by same. State whether you sold the wreck for the benefit of all concerned, and what for?

Ans. I sold the wreck, engine and hull, to Bell & McDowell, of New Orleans, for twenty-six hundred dollars, which was more than it was worth.

T. F. ECKERT.

(*Commiss'r Certificate.*)

THE UNITED STATES OF AMERICA,
*Southern District of Ohio, ss.*

I, Samuel S. Carpenter, a commissioner duly appointed by the Circuit Court of the United States for the Seventh Circuit and District of Ohio, under and by virtue of the laws of the United States, and authorized to take acknowledgments of bail and affidavits, and also to take depositions to be used in the courts of the United States, do certify that the reason for taking the foregoing depositions is, and the fact is that the witnesses are material and necessary in the cause in the caption of their said depositions named, and that they reside more than one hundred miles from the place of trial of the within named cause.

I further certify that no notification of the time and place of tak-

ing the said depositions signed by me was made out and served on the opposite party, his attorney or agent, to be present at the taking of said depositions, and put interrogatories, if he or they might think fit, neither of them residing within one hundred miles from Cincinnati, Ohio, to my knowledge.

I further certify that on the 5th day of July, A. D. one thousand eight hundred and fifty-five, I was attended by Hon. Henry E. Spencer, as counsel for the plaintiffs, and by Denison H. Shaw, John Cleveland, Thomas F. Eckert, and Peter Brown, the witnesses, who were of sound mind and lawful age, and said witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions were reduced to writing by me, in the presence of the witnesses, and from their statements, and after carefully reading the same to said witnesses, they respectively signed their depositions in my presence. I have retained said depositions in my possession for the purpose of sealing, directing, and forwarding the same, with my own hand, to the Court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and captions named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 5th day of July, A. D. 1855.

SAM'L S. CARPENTER, [SEAL.]
*United States Comm'r*
*in and for the Southern District of Ohio.*

| | | | |
|---|---|---|---|
| Comm'r fees | $11 | | p'd by pl'ffs. |
| Clerk's " | | 50 | " " " |
| Postage | | | " " " |
| Witnesses | | | |
| Cleveland | 1 | 50 | due. |
| Brown | 1 | 50 | due. |

(*Certificate of Clerk.*)

UNITED STATES OF AMERICA,
*Southern District of Ohio, ss.*

I, William Miner, Clerk of Circuit Court of the United States for the Southern District of Ohio, do hereby certify that Samuel S. Carpenter, Esquire, before whom the foregoing depositions were taken, and who has thereto subscribed his name, was at the time of so doing, and now is United States Commissioner in and for the Southern District of Ohio, duly appointed and qualified, and that to all whose acts as such, due faith and credit are and ought to be given, as well in Courts of Justice as thereout. And I do further certify that the signature thereto attached is genuine, and in the proper handwriting of the said Samuel S. Carpenter.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Cincinnati, this seventh day of [L. S.] July, A. D. 1855, and of the Independence of the United States the 80th.

WM. MINER,
*U. S. Cl'k Southern Dist. Ohio.*

(*Aff't of Dennison H. Shaw.*)

UNITED STATES OF AMERICA,
*Eastern Dist. of Louisiana, City of New Orleans, ss.*

In the cause of THOMAS JACKSON, WILLIAM HIGDON, ARCHIBALD OLDS,

vs.

THE STEAMER MAGNOLIA.

Pending in the District Court of the United States, for the Middle District of Ala.

Personally appeared, at New Orleans, in the Eastern District of Louisiana aforesaid, before me, the undersigned, a Commissioner of the United States in and for said District, duly commissioned and qualified, Dennison H. Shaw, of Hamilton County, Ohio, who, being first duly sworn, deposeth and saith that he is the agent of the plaintiffs in the above stated cause, and that the testimony of William Thornley, R. B. Bell, and John E. Hyde is, as he is advised by his counsel, and verily believes, material and necessary for the said plaintiffs, in the prosecution of the said above stated cause; that the said William Thornley, and R. B. Bell, and Jno. E. Hyde, reside in the city of New Orleans, within the Eastern District of Louisiana, and more than one hundred miles distant from Montgomery, in the State of Alabama, the place of holding said District Court, of the United States in and for the Middle District of Alabama, in which said cause is pending. And said deponent further says that he is informed and believes that William F. James, owner and claimant of the said steamboat "Magnolia," resides in the City of Mobile, in the State of Alabama, more than one hundred miles from New Orleans, where the examination of said witnesses is expected to be made, and that he is also informed and believes that the said claimant has no attorney or agent within one hundred miles of New Orleans, where the deposition of said witnesses is to be taken.

DENNISON H. SHAW.

Sworn to and subscribed at New Orleans, this 17th day of November, 1855, before

ROB'T M. LUTHER,
*U. S. Com'r East. Dist. of La.*

(*Deposition of Thornley.*)

UNITED STATES OF AMERICA,
*Eastern District of Louisiana, City of New Orleans, ss.*

Be it remembered, that on this seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, before me, Robert Mills Luther, a Commissioner, duly appointed on the 29th April, 1848, by the Circuit Court of the United States in and for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the Acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,' " passed March 1st, 1817, and the act, entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, personally appeared Wm. T. Thornley, R. B. Bell, and John E. Hyde, persons of sound mind and lawful age, witnesses for the plaintiffs' lib't in a civil suit now depending in the District Court of the United States in and for the Middle District of Alabama, wherein Thomas Jackson, William Higdon, and Archibald Olds, are plaintiffs, and the owner of the st'r "Magnolia" libelled, is claimant and defendant, and the said witnesses being by me first carefully examined and cautioned, and severally sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, what is hereinafter, in their own language, set forth, that is to say—

William T. Thornley, aforesaid, having been duly sworn, deposeth and saith that he has no interest in the event of this suit. That he is 32 or 3 years of age, a resident of this city, and by profession and occupation a steamboat clerk. That in February, 1854, he was employed in such capacity as 2d clerk on the steamer "Wetumpka," the property of plaintiffs herein. That said steamer was then engaged in the coasting trade between New Orleans, and Montgomery and Wetumpka, Ala. That on the 13th day of February, 1854, while said steamer Wetumpka was ascending the Alabama River, immediately above a point known as "Ead's Ferry," on said river, also known as Coal Bluff, and about three miles below the place called and known as "Yellow Jacket Bar," and after she had been coming up slowly, and for three or four miles tolling her bell in consequence of the smoky and misty atmosphere then on the river, this deponent, who was seated in the hall of the boat near the stove, was aroused by hearing a long whistle from our boat, such as is usual as a signal to other boats, succeeded soon by one tap of the bell, indicating that another boat was descending, and that the Wetumpka would take to the starboard. After hearing this tap, deponent went out on the larboard side of the boiler-deck to see the other boat pass; and seeing

that she was coming in to us, I immediately returned into the hall of our boat and informed the officers of our boat that she was coming into us. Our boat was struck by her just about the time when I announced the fact to them. She came quartering in upon us on the larboard side, her bow striking us half way between the capstan and the front cabin steps, knocking the steps down and a great portion of the forecastle load (which consisted of hay and other stuff) overboard, and caused the Wetumpka to sink, within a half a minute, up to her boiler-deck. This collision occurred about ½ past 7 o'clock in the evening. The evening was smoky and foggy, but the signal lights of a boat could be seen above the thickest part of the fog, and the trees on both shores could also be seen distinctly; that is, the tops of the trees could be seen distinctly. I am here speaking of the appearance of the atmosphere and surrounding objects at the time I came out to see the boat pass as already stated. Previously I had been sitting in the cabin and did not observe the fog. The Wetumpka was at the time running up the starboard side of the river under a point just above, and so near the bank that when the Magnolia struck us the Wetumpka was forced so close into the bank and among the trees that I was enabled to get on to one of the trees hanging over, on which I remained, with the mate and two deck hands, until we were taken off by the Magnolia's yawl. The Magnolia, as she came into us, was quartering across the river, coming out of the bend from the middle of the river and meeting us as we ran up near the starboard shore under the point.

I heard no response from the Magnolia to the whistle signal given by our boat prior to the collision—nor did I hear any response to our signal of one tap of the bell.

The Magnolia came into us under full headway; our boat had been running slowly, and at the time she gave the signal already spoken of, her engine bells were rung for her to stop; but I don't know whether she was stopped or not.

As the Magnolia backed out from the wreck, the bow of the Wetumpka swung out into the river, and she floated down about 100 yards or 120, as I have since observed. When I last saw the Wetumpka, she was lying near the starboard shore, about 100 to 120 yards below the place of collision, and 20 to 25 y'ds distant from the shore in high water.

Between the whistling on our boat as a signal, and the time of collision, not more than a minute and a half to two minutes elapsed, altogether.

Captain Shaw was on watch on our boat at the time of collision, and had been since about ¼ past 6 o'clock—supper time.

And further deponent saith not.

WM. T. THORNLEY.

ROB'T M. LUTHER,
*U. S. Com'r.*

(*Deposition of R. B. Bell.*)

Robert B. Bell, aforesaid, having been duly sworn, deposeth and saith that he is a merchant of this city, and familiar with the steamboating interest, value of steamers, &c.; that he has often seen the steamboat "Wetumpka," and thinks that he last saw her about the 10th of February, 1854, in the new basin of this city. He thinks that she was then worth about twenty thousand dollars, with her engines, machinery, and all other appurtenances. She was then in her second running season, and had been recently repaired, about a month before. Witness thinks that she was in very good condition at the time he last saw her, bettered indeed by the recent repairs.

And further saith not.

R. B. BELL.

ROB'T M. LUTHER,
*U. S. Com'r.*

(*Dep. of Jno. E. Hyde.*)

John E. Hyde, having been duly sworn as aforesaid, deposeth and saith that he is a merchant of this city, and familiar with steamboats, their value, &c.; in business has been connected with them for the last twenty years, engaged in both buying and selling such boats in this city.

Witness is well acquainted with the steamer Wetumpka, which he has learned was sunk on the Alabama River, in the winter of 53-54. He had often seen her prior to that time, during the season, and just before the trip on which she was sunk. She had been left in witness' charge for two months, during which time witness was on board of her frequently. She was then laying up here, and had just been thoroughly repaired.

Witness saw and observed her condition at the time she was leaving here on her last trip, and would say that in his opinion she was then worth from twenty to twenty-two thousand dollars.

She had been running or been out about fifteen months in all, and was deemed by witness a new boat.

And further saith not.

JNO. E. HYDE.

ROB'T M. LUTHER,
*U. S. Com'r.*

(*U. S. Com'r Certificate.*)

UNITED STATES OF AMERICA,
*Fifth Circuit and Eastern District of Louisiana, City of New Orleans, ss.*

I, Robert M. Luther, Commissioner duly appointed, as aforesaid, do hereby certify that the reason for taking the foregoing deposi-

tions is, and the fact is, that the witnesses, William T. Thornley, R. B. Bell, and Jno. E. Hyde, all reside within this district, and in this city, which is more than 100 miles distant from Montgomery, Alabama, which is, by appointment of law, the place of trial of the cause for, and in which said depositions are taken and are necessary.

I further certify that no notification was made out and served on the claimant, defendant, or adverse party, or his agent or attorney, to be present at the taking of the depositions, and to put interrogatories, if he or they should think fit, and that no notification of the time and place of taking the said depositions was made out and served on said claimant, def't, or adverse party, because neither the said adverse party, nor any attorney or agent of said adverse party, was at the time of taking said depositions within (100) one hundred miles of the said city of New Orleans, the place of taking the said depositions.

I further certify that on this seventeenth day of November, A. D. 1855, I was attended by Denison H. Shaw, the agent of plaintiffs, and by the witnesses, Wm. T. Thornley, Robt. B. Bell, and John E. Hyde, who are of sound mind and lawful age, and the said witnesses were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions hereinbefore appearing were by me reduced to writing in the presence of the witnesses, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of sealing up, directing and forwarding the same with my own hand to the court for which the same was taken, with the affidavit of the plaintiffs' agent.

I further certify that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal, at New Orleans, this 17th day of November, A. D. one thousand eight hundred and fifty-five.

[L. S.] ROBERT M. LUTHER,
*U. S. Com'r in and for the Eastern Dist. of Louisiana.*

(*Commission of Clerk to take Depositions of witnesses for Claimant—Def't.*)

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES,
*For the Middle District of Alabama.*

Commission to take Depositions.

To Sidney T. Douglass and —— Owen.

Know ye, that we having full faith in your prudence and competency, have appointed you commissioners, and by these presents do

authorize you, or any one or more of you, at such time and place as you may appoint, to call before you and examine Geo. E. Smith, Charles W. Norton, Harwell Goodwin, John T. Stewart, Wm. Johnson, Wm. Herbert, John Coalter, Edward Taylor, and Wm. Cavendish, and —— Tyus as witnesses in behalf of defendant, in a case pending in the District Court of the United States for the Middle District of Alabama, at Montgomery, wherein the owners of the steamer Wetumpka are plaintiffs, and the owners of the steamer Magnolia are defendants, on oath to be by you administered, upon interrogatories annexed to this commission; to take and certify the depositions of the witnesses, and return the same to our said District Court to be holden on the fourth Monday in May, 1855, under your hands and seals.

[L. S.] Witness, Hon. John Gayle, Judge of the said Court, this fourth Monday of November, A. D. one thousand eight hundred and fifty-four.

Issued the third day of May, 1855.

PHILIP H. GAYLE,
*Clerk.*

OWNERS OF THE STEAMBOAT WETUMPKA,
vs.
THE STEAMBOAT MAGNOLIA AND OWNERS.

Cause pending in the District Court of the United States, for the Middle District of the State of Alabama.

(*Direct Int.*)

Direct interrogatories to be put to all the witnesses who may be examined on and by virtue of the annexed commission.

1st Int'y. In what business or trade was the Magnolia engaged at the time of the collision, and in what trade has she been engaged in since? Was she ever engaged in the trade between Montgomery and New Orleans, or any other point out of the State?

2d. State the port from which she commenced her trips, and the port or places to which she went at the time of the collision?

3d. In what county did the collision take place? What time of the night was it? Was it foggy or clear? How far could you see ahead? Describe the place? Was the steamer Magnolia rounding a point; if yea, what point, or what is the bend called?

4th. How far were the boats apart when the Wetumpka was first heard, and was it then known what boat it was?

5th. What was done by the officers and crew of the Magnolia? State particularly, and what was done by the officers and crew of the Watumpka? Did the Magnolia use all efforts to avoid the collision; if yea, what efforts were used? How far was her stern from the western bank at the time of the collision?

6th Int'y. Were her engines reversed, and did she back water as soon as the Wetumpka was heard; and were the engines of the Wetumpka reversed or not? Were any efforts used by the officers or crew of the Wetumpka to avoid the collision; if yea, state what was done?

7th. What is the rule pursued by boats on passing a bend or point in the river, this is, describe how the descending and ascending boats should pass; which boat ought to follow the bend, and which ought to hug or run clear to the point?

8th. Was the Magnolia in her proper place, or in the place a descending boat should be, and was the Wetumpka in her proper place at the time of the collision?

9th. State all the signals given by the Magnolia, and all the efforts she used to avoid the collision. On which side of the river was the bend, and whether she was not pursuing the bend in rounding the point. State all the circumstances, the time, character of the weather, and efforts used on the part of the Magnolia going to show that collision was unavoidable on her part, or that it was without her fault.

DARGAN,
*Proctor for Respondent.*

(*Comm'r Douglass' Cert'e.*)

THE STATE OF ALABAMA,
*City and County of Mobile.*

I, Sidney T. Douglass, one of the Commissioners named in the annexed commission, do hereby certify that in pursuance thereof I caused the said witnesses, G. E. Smith, W. T. Johnson, W. K. Hobart, J. Steward, E. Taylor, C. W. Norton, H. Goodwin, and John Tyus, to come before me, at my office, in the city of Mobile, in the month day of June, one thousand eight hundred and fifty-five, being the time and place appointed by me, and that each being then and there first duly sworn by me to speak the truth, the whole truth, and nothing but the truth, and also to make full and true answer to the interrogatories annexed, and cross-interrogatories propounded by R. B. Armistead, Esq., thereupon answered and deposed as follows, to wit:—

(*Deposition of G. E. Smith.*)

George E. Smith.—Said steamer was at the time of the collision a packet between Mobile and Montgomery, and since said time she has been engaged in the same trade. She never was engaged in the trade between Montgomery and New Orleans.

To 2d Int. From Montgomery to Mobile.

To 3d Int'y. In Wilcox County. I suppose it was about 7 o'clock in the evening. It was foggy, and we could not see far ahead. The

Magnolia was rounding a point. I don't know any particular name for said bend.

To 4. I don't know how far apart the boats were when I first heard the Wetumpka, but I heard the noise from her some time before seeing her. At said time I did not know what boat it was, but went to the whistle and blowed it; the other boat immediately answered by blowing hers.

To 5. The Magnolia was stopped, and we commenced backing as soon as we heard her whistle. In a short time the boats struck, although we had done everything we could do to avoid, on our part, a collision; after striking and examining to see if we had sustained any damage, finding we had not to any extent, we then went to the Wetumpka, to ascertain if we could render any assistance in case she was injured; we made fast to her, and pushed her in shore, where she settled down and sunk. At the time of the collision the stern of the boat was near the western bank.

To 6. I do not know what was done by the officers and crew of the Wetumpka, to avoid the collision.

To 7. The rule pursued by boats in passing a point or bend in the river, is for the descending boat to go down in the bend, and the ascending boat come up under the point.

To 8. The Magnolia was in her proper place at the time of the collision, and where a descending boat should be.

To 9. On hearing the ascending boat, the bell was tapped, the whistle blowed, and the Magnolia's wheels reversed, and the officers and crew of the Magnolia did use every effort possible to avoid the collision. The bend was on the right in descending, and on the left in ascending; and the Magnolia was pursuing the bend in rounding the point. It was about 7 o'clock in the evening, as before stated; the weather was foggy in spots or patches, and we had just got into one of these spots or patches as the boats came in collision, and it was so sudden after hearing the noise from the whistle of the Wetumpka, that but little time was left to do more than what was done, and I am confident nothing was left undone that could be done by the officers and crew of the Magnolia to avoid said collision.

(*Cross-examina'n.*)

*Cross-examined by Plaintiff.*

I was acting as captain that trip. Was on the watch at the time of the collision, standing forward on the hurricane deck. When I first saw the Wetumpka, she was not over from 50 to 75 yards off. I could not see any further on account of the fog. I think it was from 2 to 3 minutes from the time we got into the patch of fog until we heard the noise from the boat which proved to be the Wetumpka. The bell was tapped once, he believes, and the whistle blowed once when we first heard the other boat. That the rule, as before stated, as to ascending and descending boats pursuing each other on the river is founded on a custom used by st. boat men for

20 years or more, and the Magnolia was navigated according to said rule, and was in her proper place. The place at which the collision occurred, is rather a short point. Witness does not know positively, but thinks the collision occurred a little below the point, and the Magnolia, at the time he first heard the boat, was a short distance above; and I think the river at that point about 150 yards wide. The stem of the Magnolia was pretty well in the western bank at the time of the collision.

GEORGE E. SMITH.

(*Deposition of Johnson.*)

William Johnson, being next examined, deposes and says as follows:—

Answer to 1st int'y. Said steamer was, at the time of the collision, a packet between Mobile and Montgomery, and since said time has been engaged in the same trade. She never was, to my knowledge, been engaged in the trade between Montgomery and New Orleans.

To 2d int'y. From Mobile to Montgomery, and was returning to Mobile at the time of the collision.

To 3d int'y. Do not know in what county. It was before 8 o'clock in the evening. It was foggy, and could not see very far ahead. I was at my place at the engine at the time, and could not tell the place or point.

To 4th int'y. As I before stated, I was at the engine, and could not tell how far the boats were apart.

To 5th int'y. The pilot of the Magnolia rung the bell to stop her on both engines, and back her on the starboard engine first. He then rang the bell to back her on the other engine. We backed two revolutions on the starboard engine, and one on the other before she struck, and continued to do so till we backed out. Do not know what was done by the officers of the Wetumpka. As I before stated, we stopped the engines and backed out.

To 6th int'y. Her engines were backed as soon as we heard the bell ring. To the balance of this int'y I know nothing.

To 7th int'y. The ascending boats go up the point, and the descending boats come down the bend.

To 8th int'y. To this int'y I answer, I cannot tell, as I was at my place at the engine.

To 9th int'y. I heard both whistles of the boats about the same time.

(*Cross-exam'n.*)

*Cross-examined by Plaintiff.*

Witness says he was examined by the Board of Inspectors at Mobile, and testified to the same facts as in this deposition, as near as he recollects. The examination spoken of was that held before the Local Board of Inspectors of Mobile for the inquiry into the conduct

of the officers of both boats in connection with the collision. Witness says the Magnolia was running, as near as he could guess, at the rate of 12 or 15 miles an hour. Witness states he is 2d engineer in charge of the starboard engine of the Magnolia.

W. Th. JOHNSON.

(*Hurbert's Deposition.*)

William Hurbert, being next examined, deposes and says as follows:—

Answer to 1st int'y. Said steamer was, at the time of the collision, a packet between Mobile and Montgomery, and since that time she has been engaged in the same trade. She never was engaged in any trade between Montgomery and New Orleans, or any other port out of the State.

To 2d int'y. She left Mobile for Montgomery, and was returning to Mobile at the time of the collision.

To 3d int'y. I don't know the county the collision took place in. It was about 10 or 15 minutes before eight o'clock. I don't know anything more in this int'y.

To 4th int'y. To this int'y I answer, I know nothing of my own knowledge.

To 5th int'y. The pilot of the Magnolia rang the bell to stop the engines, which we did. He then rang to back the starboard engine first. She backed one revolution on that wheel, and he then rang to back her on the larboard engine. At the time, she backed two revolutions on the starboard, and one on the larboard; the boats came together. To the balance of this int'y I know nothing.

To 6th int'y. Her engines were reversed, and backed water as soon as the Wetumpka was heard. The balance of this int'y I know nothing.

To 7th int'y. The rule is that the ascending boat should hug the point, and the descending one to hug the bend.

To 8th int'y. To this int'y I answer, I know nothing of my own knowledge.

To 9th int'y. I heard the whistle of the Wetumpka first, and the Magnolia right afterwards. The bend was on the west side of the river. I was at the engine, and could not tell what efforts were made to avoid the collision, more than I have before stated.

(*Cross-ex'n.*)

*Cross-examined by Plaintiff.*

Witness says he was ass. engineer at the larboard engine at the time of the collision. Witness says, as near as he recollects, he testified to the same facts as in this deposition before the Local Board of Inspectors of Mobile, for the inquiring into the conduct of the officers of both boats in connection with the collision.

WM. R. HOBART.

(*Dep. of J. T. Steward.*)

John T. Steward, being next examined, deposes and says as follows:—

Answer to 1st int'y. She was engaged as a packet, running from Mobile to Montgomery, and has been engaged in the same trade since. To the balance of this int'y I answer no.

To 2d int'y. She was on her way to Mobile at the time of the collision.

To 3d int'y. I don't know in what county the collision took place. It was between 7 and 8 o'clock in the evening. There were little banks of fog at intervals. Could see the shape of the river some distance ahead. The Magnolia was rounding a sharp point; don't know what it is called.

To the 4th int'y. Don't know how far apart they were before the whistle of the Wetumpka was heard, or that it was the Wetumpka.

To the 5th int'y. When I heard the bell of the Magnolia rung to stop and back her, the Wetumpka was about 75 yards ahead, and seemed to be coming on at a great speed—to the balance of the int'y I know nothing.

To the 6th int'y. I heard the bell rung to stop the engines and back as soon as the whistle of the Wetumpka was heard—to the balance of this int'y I know nothing.

To the 7th int'y. The boat descending has a right to half the river and keep the bend side, the ascending boat to hug and keep the point.

To the 8th int'y. The Magnolia was in her proper place, and do not think the Wetumpka was, or they would not have come together.

To the 9th int'y. As soon as we heard the Wetumpka whistle, the Magnolia whistled and tapped her engine bell to stop and reverse the engines immediately.

(*Cross-examination.*)

*Cross-examined by Plaintiff.*

Witness named John Steward was engineer at the time, but was not on duty. The point, which was a short one, was on the left hand side coming down. The collision took place before they got entirely round the point, about the length of the Magnolia. Witness heard the whistle of another boat, and then that of his own boat, and the bell of the engineers to stop and back. He then went out on the boiler-deck; as soon as he got out on the forward part of the boiler-deck, he saw the other boat coming. Witness was on the starboard side of forward part of the boiler-deck, about four feet to the left of the derrick. Witness say that at the time that he noticed the position of the Wetumpka, she was about 40 yards from him just ahead of him, and heading across their bows in a diagonally manner. That at the time that he noticed the position of the Wetumpka, from

where he stood from the bend "side" side of the river, he thinks it was about 25 or 30 yards. If the Magnolia had gone ahead and not backed, he thinks the Wetumpka would have struck her on the starboard side. The river was at that place about 120 yards wide. The point is situated between Coles' Bluff and Hobbs' Bar. The witness thinks the Magnolia was runinng about 13 miles an hour.

The Magnolia was struck on the larboard side of her stem some four or five feet. The witness says he was examined before the Local Board of Inspectors at Mobile.

The question was asked the witness whether he testified on that examination that he went out forward and heard the engineer's bell ring to stop after he went out. He answered no, and testified the same then as he answers now as near as he remembers. The witness was asked whether he stated on that examination that the Magnolia was in the middle of the river. He answers that he does not remember what he testified, but thinks he answered they were nearest to the starboard shore.

JOHN STEWARD.

(*Dep. of Ed. Taylor.*)

Edward Taylor, being next examined, deposes and says as follows:—

Answer to 1st int'y. She was engaged as a packet between Montgomery and Mobile, and has been in the same trade since. To the balance of the int'y I answer not to my knowledge.

To 2d int'y. She was running from Montgomery to Mobile at the time of the collision.

To 3d int'y. Dont know what county the collision took place in. It was near about ½ past 7 o'clock in the evening. It was foggy at the time, but could see the tops of the trees on both sides of the bank. She was rounding a point at the time—don't know the name of the bend or point.

To 4th int'y. Don't know how far apart the boats were when the Wetumpka was heard, or that it was the Wetumpka.

To 5th int'y. I was sitting on a bale of cotton aside of the engine when I heard the Magnolia whistle, and heard no response till she blew the second time. I then went out on the guard, and immediately the bell was tapped to stop her, and right afterwards the pilot rung the bell to back her. Don't know what was done by the crew of the Wetumpka. Don't know how far her stern was from the western bank at the time of the collision.

To 6th int'y. When I first heard the Wetumpka the Magnolia was backing. To the balance of this int'y I know nothing of my own knowledge.

To 7th int'y. The rule is, that descending boats should keep the bend, and the ascending boats to keep the point.

To 8th int'y. The Magnolia was in her proper place in the bend of the river; the Wetumpka was not in her proper place.

To 9th int'y. The Magnolia blew her whistle, and there "were" no answer to it; she blew again, and then I heard the answer, and the pilot of the Magnolia immediately rung the bell to reverse the engines. The bend was on the right hand side coming down. She was rounding about the breadth of herself from the starboard side of the river coming down.

(*Cross-exam'n.*)

*Cross-examined by Plaintiff.*

The witness says he was a deck hand on the Magnolia at the time of the collision; that at the "times" you could see ahead some distance, and then, again, the fog it would be very dense, and could see only the tops of the trees.

Witness says, when he first saw the Wetumpka, he was standing on the starboard guard of the Magnolia, near the cook-house. The Wetumpka was then about 60 or 70 yards from "were" he was standing. The Wetumpka at that time seemed to be coming towards the starboard side of the Magnolia, and appeared to him as if she going to run into them near the ash-pan.

EDWARD TAYLOR.

(*Deposition of Chas. W. Norton.*)

Charles W. Norton being next examined, deposes and says as follows:—

Answer to 1st int'y. She was a packet running between the cities of Mobile and Montgomery at the time of said collision, and she has been engaged in said business so long as the river was sufficiently high to enable her to run. She never was engaged in the trade between Montgomery and New Orleans, or any other port out of this State.

To 2d int'y. She was on her downward trip from the port of Montgomery to Mobile, at the time of the said collision.

To 3d int'y. In the County of Wilcox, at about eight o'clock in the evening. There was a little fog over the waters at the time; we could not see very far ahead, but we could see the timber on each side of the river; we could not see the water in the river, the fog being about even with the river banks, and immediately forward of the jack-staff. It was difficult to see anything. The Magnolia was rounding a point, being the larboard point below Hobbs' Bar, in coming down stream.

To 4th int'y. The first intimation of a boat being near, was when we ascertained that the boat, which proved to be the Wetumpka, was immediately on us; prior to this did not know what boat it was.

To 5th int'y. The captain of the Magnolia, at the time, was on the hurricane roof, and the very instant I heard and saw the boat, I stopped the engines and rang the backing bell of the starboard engine; at the same time, gave her the wheel hard down to the star-

board, so as to throw her bow to the right; before I got the wheel hard down, I rang the other backing bell, and I don't think that the larboard engine made more than one revolution, and the starboard two or three, before the boats came in contact, the Magnolia then backing, which she continued to do until she cleared the Wetumpka, when I stopped the backing, and told the captain to go aft and look out for her stern, as she, the Magnolia, was right into the bank (on the bend side of the river), I saw that the Wetumpka was sinking with her bow deep down in the water. In the mean time, the fog had disappeared. The Wetumpka run head on into the point, and sunk down to the boiler deck. I started to turn the Magnolia round to go to the Wetumpka's assistance; before I got the Magnolia round, the Wetumpka started and swung bow out into the bend. I then took the Magnolia to the Wetumpka (on the bend side), for the purpose of turning the Wetumpka's bow towards the point, which I succeeding in doing. I then dropped the Magnolia to her stern, and "push" her, the Wetumpka's, head on towards the point (as she was drifting all the time with the current) to where she now lies, and which is about four hundred yards below where said boats first came in "contract" with each other.

To 6th int'y. Answered fully in the 5th int'y.

To 7th int'y. The boat descending is entitled to the middle and bend of the river; the ascending boat, in all cases, is bound to keep the point.

To 8th int'y. I think, when we first saw the boat, the Magnolia's bow was in the middle of the river, and I don't suppose that there is any doubt as to her being in her proper place in the river, and just where a descending boat should be—a boat in descending in making a point, her bow being in the middle of the river, her stern would naturally be swinging down in the bend.

To 9th int'y. For my answer to this int'y, I refer to my answer made to 5th int'y, as giving a full statement of all the facts of the case that came within my knowledge.

(*Cross-examination.*)

*Cross-examined by Plaintiff.*

Witness says he was pilot of the Magnolia; at the wheel at the time of the collision. That the Magnolia was running at the rate of 15 or 16 miles an hour. The first he knew of a boat was coming towards them, that he heard and saw the Wetumpka about the same time, and was about seventy yards from them. That the Wetumpka seemed to loom up under their bows through the fog. The witness was looking out, and the reason he did not see the Wetumpka sooner, was on account of the fog. The patches of fog would at times be two or three lengths of the boat, and sometimes half a mile; and the clear places about the same length, which continued so for about "a" hour before the collision. At the time he saw the other boat the

bow of the Magnolia was further from the bend shore than the stern was; by the manœuvre executed by him at the time he succeeded in getting the bow of the Magnolia, but the bow was still further from the shore than the stern was. At the time of the collision he does not think the of the Magnolia was more than half her width from the bend side of the river. Witness don't recollect that they rang the bell or blew the whistle from the time they left Clifton till the collision, which was about 8 or 9 miles distance. Witness says that he does not think the whistle was blowed or the bell rang during the fog every two minutes. Witness says that he had a copy of the Rules and Regulations relating to pilots, &c., stuck up in the pilot-house, a copy of which is hereto annexed, marked exhibit *A*.

The witness says that he don't know how far the bow of the Magnolia was from either bank at the time of the collision. The Magnolia was a regular boat engaged in the trade between Mobile and Montgomery, at the time of the collision. The point spoken of is rather a short one. That below where the collision took place for about a mile the point continues, but is not so short.

CHAS. W. NORTON.

(*Dep. of Thos. D. Bell.*)

Bell, being next examined, deposes and says as follows:—

To 1st int'y. Said steamer was at the time of the collision a packet between Mobile and Montgomery, and since has been engaged in the same trade. She was never engaged in the trade between Montgomery and New Orleans.

To 2d int'y. She was on her way from Montgomery to Mobile.

To 3d int'y. In Wilcox County. It was between 7 and 8 o'clock in the evening. It was foggy at times. Could see the tops of the trees on either bank, but could not see far ahead. The Magnolia was rounding a point.

To 4th int'y. I think they were from 50 to 100 yards apart. Did not know what boat it was till part of the crew got on our boat.

To 5th int'y. The capt. of Magnolia blew the whistle, and the bell was rung to stop and back her, which was done. Don't know what was done by the officers and crew of the Wetumpka. Don't know how far the stern of the Magnolia was from the western bank.

To 6th int'y. The engines of the Magnolia were reversed, and she backed water. Don't think the engines of the Wetumpka backed water, and don't know what efforts the crew made to avoid the collision.

To 7th int'y. The rule pursued is for the descending boat to go down in the bend, and the ascending boat come up under the point.

To 8th int'y. The Magnolia was in her proper place; don't think the Wetumpka was.

To 9th int'y. She blew her whistle and rang her bells to stop her, and then back her, which she continued to do till she backed out. The

bend was on the starboard side going down. When we first saw the Wetumpka, we backed on the starboard wheel first, so as to throw her bow further into the bend, and immediately backed on the other wheel, and continued to do so till after the collision. We then rounded to and went to the assistance of the Wetumpka, and while we were rounding to the Wetumpka ran into the point and swung out again, bow in the stream. We then went alongside and pushed her in towards the shore, where she now lies, which is about fifty yards below where they struck. (Witness was carpenter of the boat at the time of the collision.)

Cross examination waived by plaintiff.

THOS. D. BELL.

(*Dep. of H. Goodwin.*)

Harwell Goodwin, being next examined, deposes and says:—

To 1st int'y. She was engaged as a packet running between the ports of Mobile and Montgomery, at the time of said collision. I left her at said trip, and said S. B. Magnolia has never been engaged to my knowledge, in the trade between Montgomery and New Orleans, or any other port out of this State.

To 2d int'y. She was bound from Montgomery to Mobile at the time of the collision.

To 3d int'y. The collision took place in Wilcox County; I think at about 7 o'clock in the evening. At the time of the collision it was clear in spots, and also foggy in spots, and as we came in contact with the boat, it was at the time the Magnolia had just got into one of those foggy spots, and we could not see directly ahead of the bow of the Magnolia over fifty yards, if that much, but could see the timber on the banks of the river, when in those foggy spots. The Magnolia was in the bend of the river, having shortly before passed Hobbs' Bar, and was probably about half mile below the said bar, and a little below the point.

To 4th int'y. I should suppose the boat, which subsequently proved to be the Wetumpka, about seventy yards apart from the Magnolia, when I first heard her. I then did not know what boat she was.

To 5th int'y. After hearing the boat, the stopping bell of the Magnolia was rung, and soon thereafter the backing bell, and she was prior to and at the time of said collision, and I think every exertion was made that could be by those in charge of the Magnolia to avoid a collision. I don't know how far the stern of the Magnolia was from the western bank, but should judge that it was pretty close in at the time of the collision.

To 6th int'y. The engines of the Magnolia were reversed, as before stated, prior to and at the time of the collision, and the Magnolia was then backing. I know not what efforts, if any, were made by those in charge of the Wetumpka to avoid a collision.

To 7th int'y. The rule on the rivers is and has been for years, for

the ascending boats to hug or run close to the point, the descending boats are entitled to the bend.

To 8th int'y. The Magnolia was in her proper place, and where a descending boat should be—the Wetumpka was out of place at the time.

To 9th int'y. I have previously stated all the efforts and signals given by the Magnolia to avoid the collision, as also the character of the weather, and I think the collision unavoidable on the part of the Magnolia.

HARWELL GOODWIN.

(*Dep. of Jno. Tyus.*)

John Tyus being next examined, to wit, on this fifteenth day of June, A. D. 1855, answers and says as follows :—

To 1st int'y. She was a packet between Mobile and Montgomery at the time of the collision alluded to, and continued in the same trade so long as the river permitted. She was never engaged in the trade between Mobile and New Orleans, or any other port out of this State.

To 2d int'y. At the time of the collision the Magnolia was bound from Montgomery to Mobile.

To 3d int'y. I think it was in Wilcox County, about 8 o'clock in the evening, or a little before, as I suppose. It was foggy on the river at the time, and so much so that I could not see immediately ahead of her jack-staff any distance. The Magnolia was in the middle of the river running around the point, being the first point below Hobbs' Bar.

To 4 int'y. The Wetumpka could not have been very far from the Magnolia. When I first heard her whistle I then did not know what boat it was.

To 5 int'y. As soon as the other boat was heard the engines were stopped, and the backing bell of the Magnolia rung, and she was backing at the time the boats struck, which she continued doing until the Magnolia cleared her. I heard bells rung in the other boat, which I suppose were engine bells—further than this I know not what was done on the other boat to avoid the collision, and I am satisfied that every effort was made by those in charge of the Magnolia to avoid the collision. I do not know how far the stern of the Magnolia was at the time of the collision from the western bank.

To 6 int'y. This interrogatory is fully answered in my answer to the 5th interrogatory, being the last.

To 7 int'y. The boat going down runs the bend, and on hearing or seeing a boat taps the bell once as a signal from her as being on the starboard side, the ascending boats runs or hugs the point.

To 8 int'y. The Magnolia was in her proper place, and where a descending boat should be. The Wetumpka should have run the

points, and had she done so there would have been plenty of room for her to have passed the Magnolia without difficulty.

To 9 int'y. I believe I have stated all signals given, and the efforts made by the Magnolia to avoid the collision—the bend was on the starboard side of the river, and the Magnolia was pursuing the middle of the river in descending. I have previously stated the character of the weather, and also stated what efforts were made by the Magnolia to avoid a collision.

JOHN TYUS.

(*Cross-exam'n.*)

*Cross-examined by the plaintiff.*

The speed of the Magnolia was at the time of the collision about twenty miles per hour. The Magnolia was in the middle of the river, and when we saw the Wetumpka she was at our starboard on the bend side, and had she kept on she would have passed between the Magnolia and the bend side of the river—the first I knew of the other boat was hearing her whistle. I don't know whether she blew once or twice, or do I recollect that she rang her big bell or not. So soon as we heard the whistle of the other boat, we put the wheel down as hard as we could, so as to throw the bow of the Magnolia to the bend side, but she did not have time to answer the helm before the collision took place, and the first I saw of the other boat was by her lights, and I should suppose that the boat was about one hundred yards, not over, from the Magnolia. I saw the Wetumpka's lights after I heard the whistle—the reason I did not see the lights any farther was on account of the fog; at the time of the collision the Wetumpka was across the Magnolia's bows holding up the point. Witness thinks that at the time of the collision the two boats were in the middle of the river. Witness does not think the Magnolia blew her whistle or rang her bell from the time they left Clifton until it was blown in answer to the Wetumpka's whistle.

JOHN TYUS.

(*Comm'rs Certificates.*)

And I, Sidney T. Douglas, Commissioner as aforesaid, do further certify that I have personal knowledge of the identity of the said witnesses, that their aforesaid evidence and answers under oath were taken down and reduced to writing by me or an impartial person in my presence, and being closed, was examined by the witnesses themselves, and by each approved. And that thereupon the said evidence was subscribed by said witnesses in my presence, and in the month, and at the place specified in the caption; that Mr. Ro. B. did not

have an opportunity of examining one of the witnesses, he, Armistead not being present at the time.

Witness my hand and seal, this 16 day of June, 1855.

[L. S.]

SIDNEY T. DOUGLAS.

Fees $75 00, paid.

(*Agreement of Counsel.*)

DISTRICT COURT OF THE UNITED STATES,
*for the Middle District of Alabama.*

THOMAS JACKSON, WM. HIGDON and ARCHIBALD OLDS, Owners,
vs.
THE STEAMBOAT MAGNOLIA, and Owners.

Be it remembered, that on the trial of this cause, which was a libel in admiralty, it was agreed that the question of jurisdiction should be submitted to the Court on the facts hereinafter stated, which were admitted to be true, and if the Court should be of the opinion, that the Court had jurisdiction of the cause, then the cause should be submitted to a jury for trial. But if the Court should be of opinion that it was without jurisdiction, the libel would be dismissed, and in the event an appeal was taken to the Supreme Court of the United States, and the judgment of that Court should reverse the judgment of this Court, then the cause should be remanded to this Court for trial.

The Court agreed so to try the question of jurisdiction on the facts, which are admitted to be as follows: The steamboat Wetumpka was a vessel engaged in navigation and commerce between the port of New New Orleans in Louisiana and the port of Montgomery in Alabama, and was regularly licensed and enrolled as a coasting vessel, and was of more than 30 tons burthen. The steamboat Magnolia was a boat regularly licensed and enrolled for the coasting trade, but was built for a packet boat to be employed between Mobile, Alabama, and Montgomery, Alabama. She was built in the western country and brought round to this State, and has ever since been engaged in running between Mobile and Montgomery, and has never been engaged in any other trade.

The collision which is the subject of the libel against the Magnolia, took place between her and the Wetumpka on the Alabama River, about two hundred miles above tide-water. The Magnolia is a boat of over 30 tons burthen. The foregoing are the facts in which the question of jurisdiction is submitted to the Court, together with the libel and claim and answer thereto.

WATTS & DARGAN,
*for the Magnolia and Claimants.*

HENRY C. SEMPLE,
*for the Libellants.*

(*Continuance.*)

Spring Term, June 1st, 1855.

THOMAS JACKSON et als., Owners of Steamer Wetumpka, 1016,
vs.
STEAMER MAGNOLIA.

In Admiralty.

"Ordered by the Court that this cause be continued."

And now at this day, to wit, on the 28th day of November, A. D. 1855, the following judgment was entered:—

(*Judgment.*)

THOMAS JACKSON et als., owners of Steamer Wetumpka, 1016,
vs.
STEAMER MAGNOLIA, W. F. JAMES, Claimant.

In Admiralty.

"This day came the parties by their attorneys, and the case was submitted to the Court on a plea to the jurisdiction of the Court, contained in the answer of the libel.

It appears to the Court that the fact contained in the plea being admitted to be true, that this Court has no jurisdiction of the subject matter of this suit. It is therefore considered by the Court that pl'ff's libel be dismissed, and that the defendant go hence, and that the claimant recover of the plaintiff his costs in this behalf expended for which execution may issue."

And on the 30th day of Nov'r, A. D. 1855, the following order was made, to wit:—

"THOMAS JACKSON, WILLIAM HIGDON and ARCHIBALD OLDS, Libellants, 1016,
vs.
STEAMBOAT MAGNOLIA, her tackle, &c., WIILLIAM F. JAMES Claimant and Respondent.

In Admiralty.

The libellants, conceiving themselves aggrieved by the final sentence and decree of the Court in this cause, pray that an appeal be allowed them from said sentence or decree, to the next term of the Supreme Court of the United States, which appeal is accordingly allowed, and it is ordered that a transcript of the record and proceedings in this case be sent to the Supreme Court of the United States duly authenticated, and that the appellees appear in said Court and show cause why said sentence or decree should not be corrected, and that the libellants be allowed thirty days to file a

bond with sufficient security, in the sum of two hundred and fifty dollars, to be approved by the clerk of this Court, conditioned for the prosecution of said appeal, and payment of the costs of the Supreme Court, should the said decree be affirmed payable to the appellee."

And afterwards, on the 24th day of December, A. D. 1855, a bond was filed in the words and figures following, to wit:—

(*Bond.*)

"UNITED STATES OF AMERICA,

IN THE DISTRICT COURT OF THE UNITED STATES
*for the Middle District of Alabama.*

THOMAS JACKSON, WILLIAM HIGDON, and ARCHIBALD OLDS, Owners of the Steamer Wetumpka, Libellants,

vs.

THE STEAMER MAGNOLIA, her tackle, apparel, &c., WILLIAM F. JAMES, Claimant and Respondent.

In Admiralty.

Whereas, at the November term, 1855, of the said Court, a decree was rendered in said cause, dismissing the libel and cause for want of jurisdiction, and an appeal was prayed by the libellants in open Court, at the said term, to the Supreme Court of the United States, which was allowed by the Court; and whereas, by the order of said Court entered on the 30th day of November, the appellants were allowed thirty days to file a bond, payable to the appellee, conditioned to prosecute the said appeal, and pay all costs of the Supreme Court of the United States, should the decree be affirmed, payable to the appellee, with security to be approved by the Clerk of said District Court, in the penalty of two hundred and fifty dollars.

Now, therefore, know all men by these presents, that we, Thomas Jackson, William Higdon, and Archibald Olds, principals, and William Duncan and Thomas Welsh, as security, are held and firmly bound to William F. James, his heirs, executors, administrators and assigns, in the sum of two hundred and fifty dollars, well and truly to be paid, as witness our hands and seals this the 24th day of December, Anno Domini 1855.

The condition of the above obligation is such, that whereas, the libellants in said cause have prayed an appeal to the Supreme Court of the United States, which has been allowed by the said District Court: Now, if the said appellants shall prosecute their said appeal and pay all the costs which may be awarded in said Supreme

Court, should said decree be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

THOMAS JACKSON, [SEAL.]
By HENRY C. SEMPLE.

WILLIAM HIGDON, [SEAL.]
By HENRY C. SEMPLE.

ARCHIBALD OLDS, [SEAL.]
By HENRY C. SEMPLE.

THOMAS WELSH. [SEAL.]
WILLIAM DUNCAN. [SEAL.]

Approved this Dec'r 24, 1855.

PHIL. H. GAYLE,
*Cl'k.*

Filed Dec'r 24, 1855.

PHIL. H. GAYLE,
*Cl'k.*

(*Bond.*)

UNITED STATES OF AMERICA,

IN THE DISTRICT COURT OF THE UNITED STATES
*for the Middle District of Alabama.*

THOMAS JACKSON, WILLIAM HIGDON, and ARCHIBALD OLDS, Owners of the Steamer Wetumpka, Libellants,

vs.

THE STEAMER MAGNOLIA, WILLIAM F. JAMES, Claimant and Respondent, A. H. JOHNSON and JESSE J. COX, Sureties on Claimant's Bond.

In Admiralty.

Whereas, at the November term, 1855, of said Court, a decree was rendered in said cause, dismissing the libel, and an appeal was prayed at the same term by the libellants, which was allowed by the Court: Now, know all men by these presents, that we, Thomas Jackson, William Higdon, and Archibald Olds, as appellants and principals, and Thomas Welsh and William Duncan, as sureties, are held and firmly bound, jointly and severally, as well as our executors, administrators and assigns, unto William F. James, claimant and respondent, appellee, his heirs, executors, administrators or assigns, in the just and full sum of *two hundred and fifty dollars*, well and truly to be paid, as witness our hands and seals this the 24th day of December, Anno Domini 1855.

The condition of the above obligation is such, that if the above bound appellants shall prosecute their said appeal, and pay all the

costs which may be awarded against them in the Supreme Court, and pay all the costs of the said cause, in the said Supreme Court, should said decree be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

THOMAS JACKSON, [SEAL.]
By HENRY C. SEMPLE.

WILLIAM HIGDON, [SEAL.]
By HENRY C. SEMPLE.

ARCHIBALD OLDS, [SEAL.]
By HENRY C. SEMPLE.

THOMAS WELSH. [SEAL.]
WILLIAM DUNCAN. [SEAL.]

Approved this 26 day of December, 1855.

JOHN GAYLE,
*District Judge of the United States for the Middle District of Alabama.*

(*Clerk's Certificate.*)

I, P. H. S. Gayle, Clerk of the District Court of the United States for the Middle District of the State of Alabama, hereby certify that the foregoing fifty-five pages contain a true and correct transcript of the record and proceedings in the case of Thomas Jackson, William Higdon, and Archibald Olds, owners of steamer Wetumpka, are plaintiffs, against the steamer Magnolia and owners.

In testimony whereof, at office, in the city of Montgomery, I have hereunto set my hand and affixed the seal of said Court, [SEAL.] this the fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty-six.

P. H. S. GAYLE,
*Clerk of s'd Court.*